

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspensions of Production for Aera Energy LCC's Lion Rock Unit, Point Sal Unit, Purisima Point Unit, Santa Maria Unit, and Lease OCS-P 0409

**Comment for Period:** No time period specified

**Number of comments:** 36

**Comment ID:** PLN-PAC-0001-C0000001      **Date Comment Received:** 11/20/2004 20:17:26

**Issue:** Develop alternative energy production versus off shore oil & gas leases

**Comment Text:** I adamantly oppose granting any and all California Central Coast off shore oil & gas leases due to insurmountable environmental problems (spills, transporting, release into the atmosphere causing green house warming) in favor of redirecting funding for such to developing clean, economically and environmentally sound alternative solar and on and off shore wind farm technologies. Thank You, Abram S Perlstein

**Commenter Name:** Abram S. Perlstein

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Sierra Club Member

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000002      **Date Comment Received:** 11/20/2004 20:17:49

**Issue:** In opposition to PLN-PAC-0001

**Comment Text:** II believe an EIR should be required for a continuation ('suspension') of a lease opportunity. Such continuation enhances later physical activity and should be viewed as such.

**Commenter Name:** Lesley Alexander  
**Commenter Address:** 605 San Roque Rd  
**Commenter Affiliation:** citizen  
**Commenter Email Address:** ljonesa@cox.net

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000003    **Date Comment Received:**  
11/23/2004 21:43:47

**Issue:** save endangered marine life

**Comment Text:** Developing more gas and oil leases off California's Central Coast will have adverse affects on already endangered marine species, such as sea otters. Therefore these leases should not be developed.

**Commenter Name:** [REDACTED]  
**Commenter Address:** [REDACTED]  
**Commenter Affiliation:** [REDACTED]  
**Commenter Email Address:** [REDACTED]

**Make Name Public:** N  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000004    **Date Comment Received:**  
12/01/2004 19:01:38

**Issue:**

**Comment Text:** These assessments fail to consider the full impacts of extending

the leases. The assessments ignore impacts from exploration, development, production, processing & refining, transportation, consumption, and decommissioning.

**Commenter Name:** Valerie Barboza

**Commenter Address:** 1756 Cordova Drive, San Luis Obispo, CA 93405

**Commenter Affiliation:** private citizen

**Commenter Email Address:** val\_barboza@yahoo.com

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000005      **Date Comment Received:**  
12/06/2004 10:11:52

**Issue:** OPPOSED TO PROJECT PLN-PAC-0001

**Comment Text:** I oppose the proposed suspension for the reasons contained in the attached file.

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** [REDACTED]

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

Ladies/Gentlemen of the MMS

I hereby request that the applicant be given the choice to continue operation or cease operation permanently with no opportunity to explore or start new operations in the area.

There is too much leakage of petroleum from present operations let alone new exploration and/or new operations that result from exploration. We need to protect the valuable resource we have in the beautiful California coast and further expansion of off-shore petroleum operations degrades the environment too much to allow it to continue. I respectfully request that you say "NO" to the applicant's request.

Sincerely,

[REDACTED]

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**Comment ID:** PLN-PAC-0001-C0000006    **Date Comment Received:**  
12/06/2004 10:17:59

**Issue:** OPPOSED TO SUSPENSION

**Comment Text:** I am opposed to all of the projects for proposed suspension listed herein, for the reasons listed in the attached file.

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** [REDACTED]

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

Ladies/Gentlemen of the MMS

I hereby request that the applicant be given the choice to continue operation or cease operation permanently with no opportunity to explore or start new operations in the area. There is too much leakage of petroleum from present operations let alone new exploration and/or new operations that result from exploration. We need to protect the valuable resource we have in the beautiful California coast and further expansion of off-shore petroleum operations degrades the environment too much to allow it to continue. I respectfully request that you say "NO" to the applicant's request.

Sincerely,

**Comment ID:** PLN-PAC-0001-C0000007      **Date Comment Received:**  
12/06/2004 16:24:52

**Issue:**

**Comment Text:** As a resident and homeowner in Guadalupe CA on the Central Coast. I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of point conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases.

**Commenter Name:** John Moule

**Commenter Address:** 154 Point Sal Dunes Way, Guadalupe CA

**Commenter Affiliation:**

**Commenter Email Address:** johnmoule@earthlink.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000008      **Date Comment Received:**  
12/06/2004 16:26:01

**Issue:**

**Comment Text:** As a resident and homeowner in Guadalupe CA on the Central Coast. I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of point conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases.

**Commenter Name:** John Moule

**Commenter Address:** 154 Point Sal Dunes Way, Guadalupe CA

**Commenter Affiliation:**

**Commenter Email Address:** johnmoule@earthlink.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000009      **Date Comment Received:**  
12/06/2004 16:36:03

**Issue:**

**Comment Text:** The 36 oil and gas leases off the Santa Barbara, Ventura and San Luis Obispo coast should not be extended due to the potential long term risk they pose to the marine environment, tourism and the health and well being of the residents of the coastal communities.

**Commenter Name:** robert mohle

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000010      **Date Comment Received:**  
12/06/2004 17:07:55

**Issue:**

**Comment Text:** Continue to suspend drilling. The damage from drilling outweighs the benefits.

**Commenter Name:** James Moule  
**Commenter Address:** 625 Spruce St., Berkeley, CA  
**Commenter Affiliation:**  
**Commenter Email Address:** jmoule@earthlink.net

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000011      **Date Comment Received:**  
12/06/2004 19:31:12

**Issue:**

**Comment Text:** Please allow the offshore oil and gas drilling leases to expire. The lack of development reflects the public's will to maintain this area free from such drilling and exploration. Having been to areas of the US that support oil and gas exploration on public land, I can say without reserve that the damage to the public is more than the benefit. Please ensure that California continues to be leader in protection of the public interest over corporate profits, as well as progressive energy policy focused on sustainable solutions.

**Commenter Name:** Sean Gibson  
**Commenter Address:** [REDACTED]  
**Commenter Affiliation:** Chair, San Francisco Chapter, The Surfrider Foundation  
**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000012    **Date Comment Received:**  
12/06/2004 19:35:44

**Issue:** Please do not extend drilling leases

**Comment Text:** As a resident and homeowner in California on the Pacific Coast, Irish my comments to be part of the record. I do not support any new oil platforms or drilling north of point conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases.

**Commenter Name:** David Jaffe

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000013    **Date Comment Received:**  
12/07/2004 10:12:23

**Issue:**

**Comment Text:** "As a resident and homeowner in Guadalupe CA on the Central Coast, I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of point conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases."

**Commenter Name:** Michelle

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000014    **Date Comment Received:**  
12/07/2004 11:20:20

**Issue:**

**Comment Text:** As a native California I'd like my voice to be heard. I do not support any new oil platforms along our coast line. In particular, I'm concerned about the area north of Point Conception. This has been left untouched for a reason. Please do not compromise this valuable California land. Do not open this to offshore drilling and let these leases expire.

**Commenter Name:** Nancy Rowe  
**Commenter Address:**  
**Commenter Affiliation:**  
**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000015    **Date Comment Received:**  
12/08/2004 12:13:21

**Issue:**

**Comment Text:** Dear MMS, I lived in San Luis Obispo for 7 years. San Luis Obispo county is a relatively undeveloped area, with clean water and a beautiful landscape. The Oil Companies cannot be trusted to protect the environment. Human error and mechanical failure will eventually causes spills and blowouts. Such mistakes will destroy pristine and scenic beaches and the abundance of sea life and coastal animals that live in this environment. Please allow all the above

mentioned lease to expire. Do not extend the time for any leases for off-shore oil off of California, especially anywhere north of point conception.

**Commenter Name:** Todd T. Cardiff, Esq.

**Commenter Address:** 4680 1/2 Idaho Street, San Diego, CA 92116

**Commenter Affiliation:** Surfrider Foundation

**Commenter Email Address:** tcardiff@coastlawgroup.com

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000016      **Date Comment Received:**  
12/08/2004 14:08:36

**Issue:** Let The Leases Expire. No Oil Drilling Off The Central California coast.

**Comment Text:** I am a citizen of the state of California, and a regular visitor, for personal and business reasons, to its central coast. I have friends, family, and colleagues there. I do not support any new oil platforms or drilling north of Point Conception. There is no drilling there now, and opening these leases for drilling would compromise an area that has never seen offshore oil drilling. I drive when I have to, like anyone, but I would never let my need for efficient transportation, and thus gas, and thus oil, come before the universal need to preserve our environment and our coast. I am telling you that preservation of the central coast is more important to me than cheap and/or plentiful gas. Even with the need for cheap and plentiful gas, we need to work harder to expend and waste less energy, and develop forward looking solutions, that would at the same time advance our economy, rather than ravaging our earth in order to implement short term solutions which do more harm than good. Let these leases expire and do not extend them. Thank you.

**Commenter Name:** Brian D. Katz

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000017    **Date Comment Received:**  
12/08/2004 15:29:13

**Issue:** No to Offshore Oil Drilling along the California Coast

**Comment Text:** As a resident and homeowner in California, I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of point conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases.

**Commenter Name:** [REDACTED]  
**Commenter Address:**  
**Commenter Affiliation:**  
**Commenter Email Address:**

**Make Name Public:** N  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000018    **Date Comment Received:**  
12/12/2004 01:52:14

**Issue:**

**Comment Text:** Thanks. "I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of Point Conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases

**Commenter Name:** kenneth stemwedel  
**Commenter Address:** 2200 Morro Bay  
**Commenter Affiliation:** surfrider foundation member/private citizen  
**Commenter Email Address:** stemwedel@msn.com

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000019      **Date Comment Received:**  
12/12/2004 12:44:08

**Issue:**

**Comment Text:** I wish my comments to be part of the record. I do not support any new oil platforms or drilling north of Point Conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases."

**Commenter Name:** [REDACTED]  
**Commenter Address:** [REDACTED]  
**Commenter Affiliation:** [REDACTED]  
**Commenter Email Address:** [REDACTED]

**Make Name Public:** N  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000020      **Date Comment Received:**  
12/12/2004 19:30:39

**Issue:** Comments of Environmental Defense on MMS Proposal to Grant Suspensions of Production for Aera Energy LCC's Lion Rock Unit, Point Sal Unit, Purisima Point Unit, Santa Maria Unit, and Lease OCS-P 0409

**Comment Text:** see attachment

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0001, Lion Rock Unit, Pt. Sal Unit, Purisima Point Unit, Santa Maria Unit, and Lease OCS OCS-P 0409. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in

anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released "short-form" EA's do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease "units" being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior "due diligence" requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We do not concur that these leases retain active lease status at this time. In other words, MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The "transferees", companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of

Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency's previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA's.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA's. These issues include, but are not limited to, the following:

- 1) The EA's must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA's. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
- 2) The EA's must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA's must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of the anticipated increase in OCS impacts on these species' overall prospects for survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands

National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.

- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.
- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.
- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in

recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.

- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.
- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called "new technology" would completely prevent any future oil spills and pollution incidents has been contradicted by the recent "Terra Nova" oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.
- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate "due diligence" in developing these leases and should not now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.

9) The EA's fail to describe any alternatives other than the "no action" alternative. According to NEPA, an agency must consider not only the "no action" alternative, but also "other reasonable courses of actions" and "mitigation measures (not in the proposed action)." (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA's.

10) The EA's fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA's should include an initial assessment of the scope of impacts to be considered in the EA's, including:

A description of connected, cumulative and similar actions;

A description of the reasonably foreseeable activities that may take place on these leases;

Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);

Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;

Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;

Impacts to endangered, threatened, and candidate species;

Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality

implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards

assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all the far reaching effects and perils that go along with offshore production." (311 F.3d at 1162). The court concluded that the "very broad and long term effects" of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA's now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0001-C0000021    **Date Comment Received:**  
12/14/2004 16:06:02

**Issue:** Please Stop Harming Our Coastal Resources

**Comment Text:** As a resident of California I wish you would back off and allow our California Coastal Commission to deliberate what is best for California, and then abide by our decision-making. It is without doubt that a combination of conservation and development of sustainable renewable energy resources would

eliminate the need for the danger drilling and offshore development and transportation of oil on the central coast. It is also clear that the exceedingly poor quality of oil reserves on the central coast have no higher purpose than pavement. Based upon the threat such drilling presents to our multi-billion dollar annual tourism and recreational economy, I urge you to end your cheerleading of offshore development.

**Commenter Name:** Mark Massara

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000022      **Date Comment Received:**  
12/15/2004 07:01:50

**Issue:** EAs are inadequate and do not protect threatened and endangered wildlife.

**Comment Text:** Please see attached file. If file is missing or cannot be opened please contact Steve Shimek, The Otter Project, 831/883-4159.

**Commenter Name:** Steve Shimek

**Commenter Address:** 3098 Stewart Court

**Commenter Affiliation:** The Otter Project

**Commenter Email Address:** exec@otterproject.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 14, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0001: MMS Proposal to Grant Suspensions of Production for Aera Energy LCC's Lion Rock Unit, Point Sal Unit, Purisima Point Unit, Santa Maria Unit, and Lease OCS-P 0409

To Whom It May Concern:

Thank you for this opportunity to present these comments on the Environmental Assessments (EAs) now subject to public review. While we appreciate the opportunity to comment, we feel the EAs fail to meet the detail required by NEPA, nor do they assess the impacts – and cumulative impacts – of oil and gas operations on the tracts. The Ninth Circuit found that, “These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EAs now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

The following comments are submitted on behalf of the 4,000 members of The Otter Project.

Our organization is also a partner in comments being submitted by the Environmental Defense Center of Santa Barbara. These comments are meant to reinforce our concerns over drilling within the range of the southern sea otter, a species listed as “threatened” under the Endangered Species Act.

Again, we want to emphasize that simple EAs are inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. Further, it should be noted that the recently-released “boiler-plate” EAs do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA).

The southern sea otter is listed as “threatened” under the Endangered Species Act (“ESA”), and is therefore also recognized as depleted under the Marine Mammal Protection Act (“MMPA”). (Final Revised Recovery Plan for the Southern Sea Otter, U.S. Fish and Wildlife Service (2003), page v, attached hereto and incorporated herein by reference, hereinafter referred to as “Recovery Plan.”) The southern sea otter is also listed as a “Fully Protected Species” in California.<sup>1</sup>

The EAs drastically under-represent the abundance of sea otters in the southern end of their range and in the Santa Barbara Channel. Sea otters were first observed south of Point Conception, in large numbers, in April of 1998 (California Department of Fish and Game, and US Fish and Wildlife Service, unpublished data). In 1998 at least 152 otters were seen in one group – over 5-percent of the population – south of Point Conception. Since 2001, sea otters appear to be “resident” between Point Conception and Santa Barbara (The Otter Project data. Data table available on request).

The EAs drastically misrepresent the distribution of sea otters in the region and the potential conflict with oil and gas exploration and production. The EAs say that otters are rare further than 2 miles seaward of the coast. No one has looked. In Monterey Bay, otters are commonly found in the middle of the Bay, in deep water, many miles from the coast. Sea otters are more often than not seen by us as we transit straight back from Point Conception back to Santa Barbara – up to 3 miles from the coast. And, we have heard reports of sea otters feeding on mussels from the pilings of currently producing oil rigs in the Channel. Although we recognize we cannot quantify our statement, we believe that sea otters are not rare more than two miles offshore.

The southern sea otter population was listed as threatened in 1977 because of (1) its small size and limited distribution, and (2) potential jeopardy to the remaining habitat and population by oil spills (Recovery Plan, p. 10; 42 FR 2965, 1/14/1977). Both the original (1982) and the Revised (2003) Southern Sea Otter Recovery Plans consider a potential oil spill to be the primary threat to sea otter recovery. (Recovery Plan, pp. vi, 10.) The Recovery Plan concludes that (a) an oil spill is likely to occur over the next 30 years (the period during which the 36 leases would be developed) (Recovery Plan, p. 10); (b) the probability of death in sea otters as a result of contact with oil following an oil spill is likely to be no less than 50 percent (see Recovery Plan, Appendix C: “*Using Information About the Impact of the Exxon Valdez Oil Spill on Sea Otters in South-Central Alaska to Assess the Risk of Oil Spills to the Threatened Southern Sea Otter Population*,” Allan J. Brody for U.S. Fish and Wildlife Service Southern Sea Otter Recovery Team, Ventura, California, September 1, 1992); and (c) rehabilitation of oiled sea otters following a major spill is expensive, may be detrimental to some individuals and is of questionable benefit to the population (citing Estes 1991, 1998). (Recovery Plan, pp. 10, 20 – 26, Appendix B: “*Potential Impacts of Oil Spills on the Southern Sea Otter Population*,” Final Report prepared for U.S. Fish and Wildlife Service, R. Glenn Ford and Michael L. Bonnell, January 1995.) The Recovery Plan notes that after the Exxon Valdez spill, most oiled otters were not captured and saved. Id.

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<sup>1</sup>/ CA Fish and Game Code §4700(b)(8).

Limiting oil and gas development occurs early and often in the Recovery Plan (see, e.g., “Actions Needed” in the Executive Summary: “Protect the population and reduce or eliminate the identified potential limiting factors related to human activities, including: managing petroleum exploration, extraction, and tankering to reduce the likelihood of a spill along the California coast to insignificant levels.” Recovery Plan, page x.) The 36 undeveloped oil leases are cited as a reason for listing the southern sea otter as threatened. (Recovery Plan, p. 11.)

A primary threat to southern sea otter recovery remains the threat of an oil spill. (Recovery Plan, pp. vi, viii, 23, 28, 33.) As stated in the Recovery Plan, “Oil spills, which could occur at any time, could decimate the sea otter population.” (Recovery Plan, p. viii.) Major factors contributing to the mortality of oiled sea otters appear to be 1) hypothermia, 2) shock and secondary organ dysfunction, 3) interstitial emphysema, 4) gastrointestinal ulceration, and 5) stress during captivity. (T.M. Williams et al, Emerging Care and Rehabilitation of Oiled Sea Otters: A guide for Oil Spills Involving Fur-Bearing Marine Mammals, Chapter 1 – *The Effects of Oil on Sea Otters: Histopathology, Toxicology, and Clinical History* (1995).)

Sea otters are incredibly susceptible to oil pollution. They can be killed outright when their fur is fouled by oil. Otters have no blubber; their fur is their only insulation. If their fur is fouled, they die. Sea otters can also die from ingesting the oil. This may happen in two ways: they lick the oil off their fur, and/or they eat contaminated food.

New research from the Exxon Valdez spill reveals not only the short-term, but also the long-term effects of oil spills. (C.H. Peterson et al, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, Science 302: 2082-2086 (2003); B. Ballachey et al, *Correlates to survival of juvenile sea otters in Prince William Sound, Alaska, 1992–1993*, Can.J. Zool. 81: 1494–1510, 2003; J.L. Bodkin et al, *Sea Otter population status and the process of recovery from the 1989 ‘Exxon Valdez’ oil spill*, Mar Ecol Prog Ser. 241:237-253, 2002; R.A. Garrott et al, *Mortality of sea otters in Prince William Sound following the Exxon Valdez oil spill*, Marine Mammal Science 9:343-359, 1993; D.H. Monson et al, *Long-term impacts of the Exxon Valdez oil spill on sea otters assessed through age-dependent mortality patterns*, Proc. Natl. Acad. Sci. U.S.A. 97: 6562–6567, 2000.)

Modeling suggests that an oil spill the size of the Exxon Valdez could impact 90% of the current southern sea otter population with a minimum (immediate) range-wide mortality of 50 percent. (Recovery Plan, pp. 20, C-2; A.J. Brody, et al, *Potential impacts of oil spills on California sea otters: Implications of the Exxon Valdez in Alaska*, Marine Mammal Science 12:38-53, 1996.) Past efforts to minimize potential effects of an oil spill by relocating otters to San Nicolas Island have proven unsuccessful. (Recovery Plan, pp. 13–14, 20–22.)

In addition to being protected under the ESA, the otter is listed as depleted under the MMPA. Depleted species and their habitat require protection. To be de-listed under the MMPA the population needs to be at the “optimum sustainable population,” defined in

the MMPA as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.”<sup>2</sup> According to the Recovery Plan, the lower limit of the optimum sustainable population is estimated to be approximately 8,400 individuals. (Final Revised Recovery Plan, p. vi.) Current levels are at about 2,800. (U.S. Geologic Survey, 2004.)

The Recovery Plan for the Sea Otter identified two approaches that were intended to lead to the delisting of the otter under the ESA: (1) increasing the range of the sea otters in California to lessen the risk of a single oil spill event reducing the otter population below a viable level, and (2) decreasing the likelihood of a major oil spill event within the sea otter’s range. (Recovery Plan at pp. vi, 28, Appendix D-11, 12.) Range expansion into the Southern California Bight and the Santa Barbara Channel is critical to the recovery of the sea otter. According to the July 2000 final Biological Opinion, *Reinitiation of Formal Consultation on the Containment Program for the Southern Sea Otter*, 1-8-99-FW-81, “the best available information indicates that continued, passive expansion of the range of the southern sea otter is necessary for its survival and recovery” (page 31). The literature suggests that colonization in the Channel and at the Channel Islands is critical to the survival and recovery of the sea otter; for example, in the mid-1990’s, approximately 20% of California’s sea otter population was identified at the Islands. (K. Laidre, et al, *An Estimation of Carrying Capacity for Sea Otters Along the California Coast*, Marine Mammal Science 17(2):294-309, April 2001.) New demographic and radio tagging research also emphasizes the importance of southward expansion range.

In sum, MMS must evaluate all the potential impacts from future exploration, development and production on the leases, and must consider the impacts of oil spills on sea otters and other marine wildlife.

Sincerely,

Steve Shimek  
Executive Director  
The Otter Project  
3098 Stewart Court  
Marina, CA 93933  
831/883-4159  
exec@otterproject.org

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<sup>2</sup>/ 16 U.S.C. §1362(9).

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**Comment ID:** PLN-PAC-0001-C0000023      **Date Comment Received:**  
12/15/2004 12:09:53

**Issue:** Comments on MMS Draft Environmental Assessments (EAs) for MMS Suspension Decisions on Undeveloped Leases

**Comment Text:** December 13, 2004 Minerals Management Service Pacific OCS Region Office of Environmental Evaluation 770 Paseo Camarillo Camarillo, CA 93010 RE: MMS Draft Environmental Assessments (EA's) for MMS Suspension Decisions on Undeveloped Leases Thank you for this opportunity to comment on the MMS Draft Environmental Assessments (EA's) for MMS Suspension Decisions on Undeveloped Leases on behalf of the Environmental Center of San Luis Obispo (ECOSLO). The Environmental Center has worked to protect and enhance the natural environment of San Luis Obispo County through education and community activism for over thirty-three years. ECOSLO has historically submitted comments on MMS activities in the coastal areas adjacent to and bordering San Luis Obispo County. The Environmental Center urges the preparation of Environmental Impact Statements (EIS) rather than the Environmental Assessments (EA) currently being reviewed for the MMS Suspension Decisions for Undeveloped Leases. An EA does not adequately address potential environmental effects that would result from extension and eventual development of these leases. The MMS concluded that the extension of the leases would not harm the environment because the purpose of the extensions is to simply allow the oil companies more time to prepare plans, conduct studies and submit information to MMS. The MMS must consider all of the potential activities that may occur on the leases and the impacts that would result from such activities. They must also consider these impacts on a cumulative basis. The Environmental Assessments fail to consider cumulative impacts of previous leases, the preparation of revised plans, including exploration, and the prospective future actions of continued oil extraction. All impacts must be evaluated cumulatively including impacts on: ecosystem rarity or uniqueness; ecosystem stress; baseline ecosystem "naturalness" or pristine qualities; genetic resources; ecosystem interdependency; ind

**Commenter Name:** Pamela Heatherington

**Commenter Address:** 1204 Nipomo St.

**Commenter Affiliation:** Environmental Center of San Luis Obispo

**Commenter Email Address:** pam@ecoslo.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y [System Confirmation: no attachment to this file/ngo]

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000024      **Date Comment Received:**  
12/15/2004 18:40:19

**Issue:** Effects of easement and surveying on mammal life

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir

**Commenter Address:** 925 West Campus Lane, Goleta, CA, 93117

**Commenter Affiliation:** UCSB

**Commenter Email Address:** birnir@math.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000025      **Date Comment Received:**  
12/15/2004 18:49:35

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo CamarilloCamarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public: Y**  
**Make Address Public: Y**

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** Y  
**Comment Source:** Internet  
December 15, 2004

Mr. Maurice Hill  
Office of Environmental Evaluation, Pacific OCS Region  
Minerals Management Service  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease  
Suspensions of Production or Operations, Minerals Management Service (MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

**Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.**

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and

connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than a statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0001-C0000026    **Date Comment Received:**  
12/15/2004 21:27:28

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000027    **Date Comment Received:**  
12/15/2004 21:49:25

**Issue:**

**Comment Text:** To whom it may concern at Minerals Management Service, I am writing to you as a constituent living in Santa Barbara County in regards to the oil and gas leases located off the coasts of this county as well as in Ventura and San Luis Obispo. I would like to encourage you to allow these leases to expire. As a longtime resident, I have long been opposed to using this area for such exploration and its impacts on the environment. Although your agency has admittedly claimed there would be no further environmental harm if the leases are extended, I believe that this does not take into consideration the possible activities of the gas and oil companies including: exploration (including seismic surveys), drilling, production, processing, refining, transportation (including potential tankering of heavy crude oil), consumption and decommissioning. I would like to let the agency know about my concerns. Although we face considerable needs in terms of energy production, I believe that we need to develop alternatives and encourage conservation, rather than pursue our current approaches. I continue to be gravely concerned about many issues associated with the leases, including air pollution, water pollution, visual blight (from new platforms, vessels, and coastal industrial facilities), harm to marine wildlife, and risks of oil spills, etc. I urge you to suspend the leases and allow them to expire. Thank you for your consideration. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000028    **Date Comment Received:**  
12/16/2004 04:32:40

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:** [REDACTED]

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000029      **Date Comment Received:**

12/16/2004 04:36:31

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:** [REDACTED]

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000030    **Date Comment Received:**  
12/16/2004 12:07:41

**Issue:** Postpone Easements until the impact on marine life is better understood

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Neuroscience Research Institute

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000031    **Date Comment Received:**  
12/16/2004 12:58:19

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz

**Commenter Address:** 963 West Campus Lane

**Commenter Affiliation:** University of California

**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000032    **Date Comment Received:**  
12/16/2004 14:45:43

**Issue:**

**Comment Text:** I request that the proposed 6 easements be postponed until the effects on the marine life, specifically whales, dolphins, seals, sea-lions and fish have been determined. In particular the effects on mother-calf communication along the migratory path of the gray whale must be ascertained. If the proposed surveying is in violation of the National Environmental Policy Act and the Marine Mammal Protection Act it cannot be allowed to proceed. The proposed easements will open up blocks of coastal waters to high energy seismic surveying in the Santa Barbara channel, an oceanic migratory route. Recent research has shown this noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995.

**Commenter Name:** Kenneth Pasternack

**Commenter Address:** 966 West Campus Lane, Goleta, CA 93117

**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000033    **Date Comment Received:**  
12/16/2004 15:45:29

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0001

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental

assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. In our previous comments we asked for an integration of the separate environmental reviews. We note here that the separation of possible activities involving the same platforms in the Santa Maria Basin is a particularly egregious sidestepping of the principle of cumulative review. It should be remedied. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger

**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814

**Commenter Affiliation:** President, League of Women Voters of California

**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000034      **Date Comment Received:**  
12/16/2004 18:57:02

**Issue:** Suspension – EA Comments

**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo

**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104

**Commenter Affiliation:** NRDC

**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000035      **Date Comment Received:**  
12/27/2004 17:33:43

**Issue:**

**Comment Text:** I wish my comments to be on record. I do not support any new oil platforms or drilling north of Point Conception. There is no drilling there now and to open for drilling would compromise an area of the coast that has never see off shore oil drilling. Do not extend these leases and please let them expire.

**Commenter Name:** Mimi Swenson

**Commenter Address:** 1484 Pollard Rd

**Commenter Affiliation:** active environmentalist/surfer

**Commenter Email Address:** mswenson@nat.com

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0001-C0000036      **Date Comment Received:**  
01/10/2005 16:52:19

**Issue:**

**Comment Text:** "I wish my comments to be part of the record. I do not support

any new oil platforms or drilling north of Point Conception. There is no drilling there now and to open these leases for drilling would compromise an area of the coast that has never seen offshore oil drilling. Let these leases expire and do not extend these leases."

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet



December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposes suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys “have the potential for harassing or harming protected marine mammals and sea turtles” and that “[a]coustic harassment” by the planned surveys “could potentially occur” for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. *See, e.g., id.* at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspension of Production for Nuevo Energy Company's (Plains Exploration and Production Company's) Bonito Unit.

**Comment for Period:** No time period specified

**Number of comments:** 13

**Comment ID:** PLN-PAC-0002-C0000001      **Date Comment Received:** 11/20/2004 20:19:28

**Issue:** In opposition to PLN-PAC-0002

**Comment Text:** II believe an EIR should be required for a continuation ('suspension') of a lease opportunity. Such continuation enhances later physical activity and should be viewed as such.

**Commenter Name:** Lesley Alexander  
**Commenter Address:** 605 San Roque Rd  
**Commenter Affiliation:** citizen  
**Commenter Email Address:** ljones

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

**Comment ID:** PLN-PAC-0002-C0000002      **Date Comment Received:** 11/20/2004 20:19:46

**Issue:** In opposition to PLN-PAC-0002

**Comment Text:** II believe an EIR should be required for a continuation ('suspension') of a lease opportunity. Such continuation enhances later physical activity and should be viewed as such.

**Commenter Name:** Lesley Alexander  
**Commenter Address:** 605 San Roque Rd  
**Commenter Affiliation:** citizen

**Commenter Email Address:** ljonesa@cox.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000003      **Date Comment Received:**  
12/06/2004 15:56:54

**Issue:**

**Comment Text:** I would like to voice my support for the suspension of these leases off the coast of Santa Barbara. I live one mile from the Lompoc Oil and Gas Plant located between Vandenberg Village and Mission Hills. This plant would be used for any new drilling such as Tranquillon Ridge slant project. The operation has already seen a major oil spill on the coastline at VAFB, an 11,000 acre brushfire which began on its property, and numerous leaks and releases. The pipes are corroding and the plant has outlived its original 15 yr.limit. The plant should be shut down and no further operations conducted there because of its proximity to residential areas. The off shore drilling should not be allowed because of the potential for spills, leaks, etc. The companies keep changing hands and some of the new owners do not have the revenue to upgrade or even maintain what they are purchasing. Thank you. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** [REDACTED]

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000004    **Date Comment Received:**  
12/12/2004 19:41:06

**Issue:** Comments of Environmental Defense on PLN-PAC-0002: MMS Proposal to Grant Suspension of Production for Nuevo Energy Company's (Plains Exploration and Production Company's) Bonito Unit.

**Comment Text:** see attached

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re:    PLN-PAC-0002: MMS Proposal to Grant Suspension of Production for Nuevo Energy Company's (Plains Exploration and Production Company's) Bonito Unit. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released "short-form" EA's do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease "units" being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior "due diligence" requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We do not concur that these leases retain active lease status at this time. In other words, MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The "transferees", companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency's previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA's.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA's. These issues include, but are not limited to, the following:

- 1) The EA's must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA's. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
- 2) The EA's must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA's must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of the anticipated increase in OCS impacts on these species' overall prospects for survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern

California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.

- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.
- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.
- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis

Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.

- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.
- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called "new technology" would completely prevent any future oil spills and pollution incidents has been contradicted by the recent "Terra Nova" oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.
- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate "due diligence" in developing these leases and should not

now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.

- 9) The EA's fail to describe any alternatives other than the "no action" alternative. According to NEPA, an agency must consider not only the "no action" alternative, but also "other reasonable courses of actions" and "mitigation measures (not in the proposed action)." (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA's.
- 10) The EA's fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA's should include an initial assessment of the scope of impacts to be considered in the EA's, including:

A description of connected, cumulative and similar actions;

A description of the reasonably foreseeable activities that may take place on these leases;

Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);

Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;

Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;

Impacts to endangered, threatened, and candidate species;

Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all the far reaching effects and perils that go along with offshore production." (311 F.3d at 1162). The court concluded that the "very broad and long term effects" of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA's now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0002-C0000005    **Date Comment Received:**  
12/15/2004 07:07:01

**Issue:** EAs inadequate and are not protective of threatened and endangered wildlife

**Comment Text:** Please see attached file. If file is missing or cannot be opened, please contact Steve Shimek, The Otter Project, 831/883-4159

**Commenter Name:** Steve Shimek

**Commenter Address:** 3098 Stewart Court

**Commenter Affiliation:** The Otter Project

**Commenter Email Address:** exec@otterproject.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 14, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0002: MMS Proposal to Grant Suspension of Production for Nuevo Energy Company's (Plains Exploration and Production Company's) Bonito Unit.

To Whom It May Concern:

Thank you for this opportunity to present these comments on the Environmental Assessments (EAs) now subject to public review. While we appreciate the opportunity to comment, we feel the EAs fail to meet the detail required by NEPA, nor do they assess the impacts – and cumulative impacts – of oil and gas operations on the tracts. The Ninth Circuit found that, “These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EAs now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

The following comments are submitted on behalf of the 4,000 members of The Otter Project.

Our organization is also a partner in comments being submitted by the Environmental Defense Center of Santa Barbara. These comments are meant to reinforce our concerns over drilling within the range of the southern sea otter, a species listed as “threatened” under the Endangered Species Act.

Again, we want to emphasize that simple EAs are inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. Further, it should be noted that the recently-released “boiler-plate” EAs do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA).

The southern sea otter is listed as “threatened” under the Endangered Species Act (“ESA”), and is therefore also recognized as depleted under the Marine Mammal Protection Act (“MMPA”). (Final Revised Recovery Plan for the Southern Sea Otter, U.S. Fish and Wildlife Service (2003), page v, attached hereto and incorporated herein by reference, hereinafter referred to as “Recovery Plan.”) The southern sea otter is also listed as a “Fully Protected Species” in California.<sup>1</sup>

The EAs drastically under-represent the abundance of sea otters in the southern end of their range and in the Santa Barbara Channel. Sea otters were first observed south of Point Conception, in large numbers, in April of 1998 (California Department of Fish and Game, and US Fish and Wildlife Service, unpublished data). In 1998 at least 152 otters were seen in one group – over 5-percent of the population – south of Point Conception. Since 2001, sea otters appear to be “resident” between Point Conception and Santa Barbara (The Otter Project data. Data table available on request).

The EAs drastically misrepresent the distribution of sea otters in the region and the potential conflict with oil and gas exploration and production. The EAs say that otters are rare further than 2 miles seaward of the coast. No one has looked. In Monterey Bay, otters are commonly found in the middle of the Bay, in deep water, many miles from the coast. Sea otters are more often than not seen by us as we transit straight back from Point Conception back to Santa Barbara – up to 3 miles from the coast. And, we have heard reports of sea otters feeding on mussels from the pilings of currently producing oil rigs in the Channel. Although we recognize we cannot quantify our statement, we believe that sea otters are not rare more than two miles offshore.

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<sup>1</sup>/ CA Fish and Game Code §4700(b)(8).

The southern sea otter population was listed as threatened in 1977 because of (1) its small size and limited distribution, and (2) potential jeopardy to the remaining habitat and population by oil spills (Recovery Plan, p. 10; 42 FR 2965, 1/14/1977). Both the original (1982) and the Revised (2003) Southern Sea Otter Recovery Plans consider a potential oil spill to be the primary threat to sea otter recovery. (Recovery Plan, pp. vi, 10.) The Recovery Plan concludes that (a) an oil spill is likely to occur over the next 30 years (the period during which the 36 leases would be developed) (Recovery Plan, p. 10); (b) the probability of death in sea otters as a result of contact with oil following an oil spill is likely to be no less than 50 percent (see Recovery Plan, Appendix C: *“Using Information About the Impact of the Exxon Valdez Oil Spill on Sea Otters in South-Central Alaska to Assess the Risk of Oil Spills to the Threatened Southern Sea Otter Population,”* Allan J. Brody for U.S. Fish and Wildlife Service Southern Sea Otter Recovery Team, Ventura, California, September 1, 1992); and (c) rehabilitation of oiled sea otters following a major spill is expensive, may be detrimental to some individuals and is of questionable benefit to the population (citing Estes 1991, 1998). (Recovery Plan, pp. 10, 20 – 26, Appendix B: *“Potential Impacts of Oil Spills on the Southern Sea Otter Population,”* Final Report prepared for U.S. Fish and Wildlife Service, R. Glenn Ford and Michael L. Bonnell, January 1995.) The Recovery Plan notes that after the Exxon Valdez spill, most oiled otters were not captured and saved. Id.

Limiting oil and gas development occurs early and often in the Recovery Plan (see, e.g., “Actions Needed” in the Executive Summary: “Protect the population and reduce or eliminate the identified potential limiting factors related to human activities, including: managing petroleum exploration, extraction, and tankering to reduce the likelihood of a spill along the California coast to insignificant levels.” Recovery Plan, page x.) The 36 undeveloped oil leases are cited as a reason for listing the southern sea otter as threatened. (Recovery Plan, p. 11.)

A primary threat to southern sea otter recovery remains the threat of an oil spill. (Recovery Plan, pp. vi, viii, 23, 28, 33.) As stated in the Recovery Plan, “Oil spills, which could occur at any time, could decimate the sea otter population.” (Recovery Plan, p. viii.) Major factors contributing to the mortality of oiled sea otters appear to be 1) hypothermia, 2) shock and secondary organ dysfunction, 3) interstitial emphysema, 4) gastrointestinal ulceration, and 5) stress during captivity. (T.M. Williams et al, Emerging Care and Rehabilitation of Oiled Sea Otters: A guide for Oil Spills Involving Fur-Bearing Marine Mammals, Chapter 1 – The Effects of Oil on Sea Otters: Histopathology, Toxicology, and Clinical History (1995).)

Sea otters are incredibly susceptible to oil pollution. They can be killed outright when their fur is fouled by oil. Otters have no blubber; their fur is their only insulation. If their fur is fouled, they die. Sea otters can also die from ingesting the oil. This may happen in two ways: they lick the oil off their fur, and/or they eat contaminated food.

New research from the Exxon Valdez spill reveals not only the short-term, but also the long-term effects of oil spills. (C.H. Peterson et al, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, Science 302: 2082-2086 (2003); B. Ballachey et al,

*Correlates to survival of juvenile sea otters in Prince William Sound, Alaska, 1992–1993*, Can.J. Zool. 81: 1494–1510, 2003; J.L. Bodkin et al, *Sea Otter population status and the process of recovery from the 1989 ‘Exxon Valdez’ oil spill*, Mar Ecol Prog Ser. 241:237-253, 2002; R.A. Garrott et al, *Mortality of sea otters in Prince William Sound following the Exxon Valdez oil spill*, Marine Mammal Science 9:343-359, 1993; D.H. Monson et al, *Long-term impacts of the Exxon Valdez oil spill on sea otters assessed through age-dependent mortality patterns*, Proc. Natl. Acad. Sci. U.S.A. 97: 6562–6567, 2000.)

Modeling suggests that an oil spill the size of the Exxon Valdez could impact 90% of the current southern sea otter population with a minimum (immediate) range-wide mortality of 50 percent. (Recovery Plan, pp. 20, C-2; A.J. Brody, et al, *Potential impacts of oil spills on California sea otters: Implications of the Exxon Valdez in Alaska*, Marine Mammal Science 12:38-53, 1996.) Past efforts to minimize potential effects of an oil spill by relocating otters to San Nicolas Island have proven unsuccessful. (Recovery Plan, pp. 13–14, 20–22.)

In addition to being protected under the ESA, the otter is listed as depleted under the MMPA. Depleted species and their habitat require protection. To be de-listed under the MMPA the population needs to be at the “optimum sustainable population,” defined in the MMPA as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.”<sup>2</sup> According to the Recovery Plan, the lower limit of the optimum sustainable population is estimated to be approximately 8,400 individuals. (Final Revised Recovery Plan, p. vi.) Current levels are at about 2,800. (U.S. Geologic Survey, 2004.)

The Recovery Plan for the Sea Otter identified two approaches that were intended to lead to the delisting of the otter under the ESA: (1) increasing the range of the sea otters in California to lessen the risk of a single oil spill event reducing the otter population below a viable level, and (2) decreasing the likelihood of a major oil spill event within the sea otter’s range. (Recovery Plan at pp. vi, 28, Appendix D-11, 12.) Range expansion into the Southern California Bight and the Santa Barbara Channel is critical to the recovery of the sea otter. According to the July 2000 final Biological Opinion, *Reinitiation of Formal Consultation on the Containment Program for the Southern Sea Otter*, 1-8-99-FW-81, “the best available information indicates that continued, passive expansion of the range of the southern sea otter is necessary for its survival and recovery” (page 31). The literature suggests that colonization in the Channel and at the Channel Islands is critical to the survival and recovery of the sea otter; for example, in the mid-1990’s, approximately 20% of California’s sea otter population was identified at the Islands. (K. Laidre, et al, *An Estimation of Carrying Capacity for Sea Otters Along the California Coast*, Marine Mammal Science 17(2):294-309, April 2001.) New demographic and radio tagging research also emphasizes the importance of southward expansion range.

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<sup>2</sup>/ 16 U.S.C. §1362(9).

In sum, MMS must evaluate all the potential impacts from future exploration, development and production on the leases, and must consider the impacts of oil spills on sea otters and other marine wildlife.

Sincerely,

Steve Shimek  
Executive Director  
The Otter Project  
3098 Stewart Court  
Marina, CA 93933  
831/883-4159  
exec@otterproject.org

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**Comment ID:** PLN-PAC-0002-C0000006      **Date Comment Received:**  
12/15/2004 18:51:14

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo CamarilloCamarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the

scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

**Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production**

**operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.**

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than a statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0002-C0000007      **Date Comment Received:**  
12/15/2004 21:27:56

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000008      **Date Comment Received:**  
12/15/2004 21:53:46

**Issue:** Please allow the leases to expire

**Comment Text:** To whom it may concern at Minerals Management Service, I am writing to you as a constituent living in Santa Barbara County in regards to the oil and gas leases located off the coasts of this county as well as in Ventura and San Luis Obispo. I would like to encourage you to allow these leases to expire. As a longtime resident, I have long been opposed to using this area for such exploration and its impacts on the environment. Although your agency has admittedly claimed there would be no further environmental harm if the leases are extended, I believe that this does not take into consideration the possible activities of the gas and oil companies including: exploration (including seismic surveys), drilling, production, processing, refining, transportation (including potential tankering of heavy crude oil), consumption and decommissioning. I would like to let the agency know about my concerns. Although we face considerable needs in terms of energy production, I believe that we need to develop alternatives and encourage conservation, rather than pursue our current approaches. I continue to be gravely concerned about many issues associated with the leases, including air pollution, water pollution, visual blight (from new platforms, vessels, and coastal industrial facilities), harm to marine wildlife, and risks of oil spills, etc. I urge you to suspend the leases and allow them to expire. Thank you for your consideration. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000009      **Date Comment Received:**  
12/16/2004 12:10:37

**Issue:** Postpone easement until impact on marine life is better understood.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Neuroscience Research Institute

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000010      **Date Comment Received:**  
12/16/2004 12:58:59

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz  
**Commenter Address:** 963 West Campus Lane  
**Commenter Affiliation:** University of California  
**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000011      **Date Comment Received:**  
12/16/2004 15:46:38

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0001

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. In our previous comments we asked for an integration of the separate environmental reviews. We note here that the separation of possible activities involving the same platforms in the Santa Maria Basin is a particularly egregious sidestepping of the principle of cumulative review. It should be remedied. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger  
**Commenter Address:**  
**Commenter Affiliation:**  
**Commenter Email Address:**

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000012     **Date Comment Received:**  
12/16/2004 15:48:17

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0002

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. In our previous comments we asked for an integration of the separate environmental reviews. We note here that the separation of possible activities involving the same platforms in the Santa Maria Basin is a particularly egregious sidestepping of the principle of cumulative review. It should be remedied. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger  
**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814  
**Commenter Affiliation:** President, League of Women Voters of California  
**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0002-C0000013      **Date Comment Received:**  
12/16/2004 18:57:45

**Issue:** Suspension – EA Comments  
**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo  
**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104  
**Commenter Affiliation:** NRDC  
**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** Y  
**Comment Source:** Internet

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December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposes suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys "have the potential for harassing or harming protected marine mammals and sea turtles" and that "[a]coustic harassment" by the planned surveys "could potentially occur" for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. *See, e.g., id.* at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspension of Production for Arguello Inc.'s Rocky Point Unit.

**Comment for Period:** No time period specified

**Number of comments:** 11

**Comment ID:** PLN-PAC-0003-C0000001      **Date Comment Received:** 12/12/2004 19:44:55

**Issue:** Comments of Environmental Defense on PLN-PAC-0003: MMS Proposal to Grant Suspension of Production for Arguello Inc.'s Rocky Point Unit

**Comment Text:** see attached

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0003: MMS Proposal to Grant Suspension of Production for Arguello Inc.'s Rocky Point Unit. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released "short-form" EA's do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease "units" being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior "due diligence" requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We do not concur that these leases retain active lease status at this time. In other words,

MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The “transferees”, companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency’s previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA’s.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA’s. These issues include, but are not limited to, the following:

- 1) The EA’s must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA’s. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
- 2) The EA’s must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA’s must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of the anticipated increase in OCS impacts on these species’ overall prospects for

survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.

- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.
- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.

- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.
- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.
- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called "new technology" would completely prevent any future oil spills and pollution incidents has been contradicted by the recent "Terra Nova" oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.
- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and

ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate “due diligence” in developing these leases and should not now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.

- 9) The EA’s fail to describe any alternatives other than the “no action” alternative. According to NEPA, an agency must consider not only the “no action” alternative, but also “other reasonable courses of actions” and “mitigation measures (not in the proposed action).” (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA’s.
- 10) The EA’s fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA’s should include an initial assessment of the scope of impacts to be considered in the EA’s, including:

A description of connected, cumulative and similar actions;

A description of the reasonably foreseeable activities that may take place on these leases;

Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);

Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;

Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;

Impacts to endangered, threatened, and candidate species;

Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and

Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as

alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all the far reaching effects and perils that go along with offshore production." (311 F.3d at 1162). The court concluded that the "very broad and long term effects" of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA's now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0003-C0000002    **Date Comment Received:**  
12/15/2004 07:11:03

**Issue:** EAs inadequate and not protective of threatened and endangered wildlife.

**Comment Text:** Please see attached file. If the file is missing or cannot be opened, please contact Steve Shimek, The Otter Project, 831/883-4159

**Commenter Name:** Steve Shimek  
**Commenter Address:** 3098 Stewart Court  
**Commenter Affiliation:** The Otter Project  
**Commenter Email Address:** exec@otterproject.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** Y  
**Comment Source:** Internet  
December 14, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re:    PLN-PAC-0003: MMS Proposal to Grant Suspension of Production for Arguello  
      Inc.'s Rocky Point Unit.

To Whom It May Concern:

Thank you for this opportunity to present these comments on the Environmental Assessments (EAs) now subject to public review. While we appreciate the opportunity to comment, we feel the EAs fail to meet the detail required by NEPA, nor do they assess the impacts – and cumulative impacts – of oil and gas operations on the tracts. The Ninth Circuit found that, “These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EAs now being circulated for public review, therefore, fail to rise to meet the clear

requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

The following comments are submitted on behalf of the 4,000 members of The Otter Project.

Our organization is also a partner in comments being submitted by the Environmental Defense Center of Santa Barbara. These comments are meant to reinforce our concerns over drilling within the range of the southern sea otter, a species listed as “threatened” under the Endangered Species Act.

Again, we want to emphasize that simple EAs are inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. Further, it should be noted that the recently-released “boiler-plate” EAs do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA).

The southern sea otter is listed as “threatened” under the Endangered Species Act (“ESA”), and is therefore also recognized as depleted under the Marine Mammal Protection Act (“MMPA”). (Final Revised Recovery Plan for the Southern Sea Otter, U.S. Fish and Wildlife Service (2003), page v, attached hereto and incorporated herein by reference, hereinafter referred to as “Recovery Plan.”) The southern sea otter is also listed as a “Fully Protected Species” in California.<sup>1</sup>

The EAs drastically under-represent the abundance of sea otters in the southern end of their range and in the Santa Barbara Channel. Sea otters were first observed south of Point Conception, in large numbers, in April of 1998 (California Department of Fish and Game, and US Fish and Wildlife Service, unpublished data). In 1998 at least 152 otters were seen in one group – over 5-percent of the population – south of Point Conception. Since 2001, sea otters appear to be “resident” between Point Conception and Santa Barbara (The Otter Project data. Data table available on request).

The EAs drastically misrepresent the distribution of sea otters in the region and the potential conflict with oil and gas exploration and production. The EAs say that otters are rare further than 2 miles seaward of the coast. No one has looked. In Monterey Bay, otters are commonly found in the middle of the Bay, in deep water, many miles from the coast. Sea otters are more often than not seen by us as we transit straight back from Point Conception back to Santa Barbara – up to 3 miles from the coast. And, we have heard reports of sea otters feeding on mussels from the pilings of currently producing oil

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<sup>1</sup>/ CA Fish and Game Code §4700(b)(8).

rigs in the Channel. Although we recognize we cannot quantify our statement, we believe that sea otters are not rare more than two miles offshore.

The southern sea otter population was listed as threatened in 1977 because of (1) its small size and limited distribution, and (2) potential jeopardy to the remaining habitat and population by oil spills (Recovery Plan, p. 10; 42 FR 2965, 1/14/1977). Both the original (1982) and the Revised (2003) Southern Sea Otter Recovery Plans consider a potential oil spill to be the primary threat to sea otter recovery. (Recovery Plan, pp. vi, 10.) The Recovery Plan concludes that (a) an oil spill is likely to occur over the next 30 years (the period during which the 36 leases would be developed) (Recovery Plan, p. 10); (b) the probability of death in sea otters as a result of contact with oil following an oil spill is likely to be no less than 50 percent (see Recovery Plan, Appendix C: *“Using Information About the Impact of the Exxon Valdez Oil Spill on Sea Otters in South-Central Alaska to Assess the Risk of Oil Spills to the Threatened Southern Sea Otter Population,”* Allan J. Brody for U.S. Fish and Wildlife Service Southern Sea Otter Recovery Team, Ventura, California, September 1, 1992); and (c) rehabilitation of oiled sea otters following a major spill is expensive, may be detrimental to some individuals and is of questionable benefit to the population (citing Estes 1991, 1998). (Recovery Plan, pp. 10, 20 – 26, Appendix B: *“Potential Impacts of Oil Spills on the Southern Sea Otter Population,”* Final Report prepared for U.S. Fish and Wildlife Service, R. Glenn Ford and Michael L. Bonnell, January 1995.) The Recovery Plan notes that after the Exxon Valdez spill, most oiled otters were not captured and saved. Id.

Limiting oil and gas development occurs early and often in the Recovery Plan (see, e.g., “Actions Needed” in the Executive Summary: “Protect the population and reduce or eliminate the identified potential limiting factors related to human activities, including: managing petroleum exploration, extraction, and tankering to reduce the likelihood of a spill along the California coast to insignificant levels.” Recovery Plan, page x.) The 36 undeveloped oil leases are cited as a reason for listing the southern sea otter as threatened. (Recovery Plan, p. 11.)

A primary threat to southern sea otter recovery remains the threat of an oil spill. (Recovery Plan, pp. vi, viii, 23, 28, 33.) As stated in the Recovery Plan, “Oil spills, which could occur at any time, could decimate the sea otter population.” (Recovery Plan, p. viii.) Major factors contributing to the mortality of oiled sea otters appear to be 1) hypothermia, 2) shock and secondary organ dysfunction, 3) interstitial emphysema, 4) gastrointestinal ulceration, and 5) stress during captivity. (T.M. Williams et al, Emerging Care and Rehabilitation of Oiled Sea Otters: A guide for Oil Spills Involving Fur-Bearing Marine Mammals, Chapter 1 – The Effects of Oil on Sea Otters: Histopathology, Toxicology, and Clinical History (1995).)

Sea otters are incredibly susceptible to oil pollution. They can be killed outright when their fur is fouled by oil. Otters have no blubber; their fur is their only insulation. If their fur is fouled, they die. Sea otters can also die from ingesting the oil. This may happen in two ways: they lick the oil off their fur, and/or they eat contaminated food.

New research from the Exxon Valdez spill reveals not only the short-term, but also the long-term effects of oil spills. (C.H. Peterson et al, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, Science 302: 2082-2086 (2003); B. Ballachey et al, *Correlates to survival of juvenile sea otters in Prince William Sound, Alaska, 1992–1993*, Can.J. Zool. 81: 1494–1510, 2003; J.L. Bodkin et al, *Sea Otter population status and the process of recovery from the 1989 ‘Exxon Valdez’ oil spill*, Mar Ecol Prog Ser. 241:237-253, 2002; R.A. Garrott et al, *Mortality of sea otters in Prince William Sound following the Exxon Valdez oil spill*, Marine Mammal Science 9:343-359, 1993; D.H. Monson et al, *Long-term impacts of the Exxon Valdez oil spill on sea otters assessed through age-dependent mortality patterns*, Proc. Natl. Acad. Sci. U.S.A. 97: 6562–6567, 2000.)

Modeling suggests that an oil spill the size of the Exxon Valdez could impact 90% of the current southern sea otter population with a minimum (immediate) range-wide mortality of 50 percent. (Recovery Plan, pp. 20, C-2; A.J. Brody, et al, *Potential impacts of oil spills on California sea otters: Implications of the Exxon Valdez in Alaska*, Marine Mammal Science 12:38-53, 1996.) Past efforts to minimize potential effects of an oil spill by relocating otters to San Nicolas Island have proven unsuccessful. (Recovery Plan, pp. 13–14, 20–22.)

In addition to being protected under the ESA, the otter is listed as depleted under the MMPA. Depleted species and their habitat require protection. To be de-listed under the MMPA the population needs to be at the “optimum sustainable population,” defined in the MMPA as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.”<sup>2</sup> According to the Recovery Plan, the lower limit of the optimum sustainable population is estimated to be approximately 8,400 individuals. (Final Revised Recovery Plan, p. vi.) Current levels are at about 2,800. (U.S. Geologic Survey, 2004.)

The Recovery Plan for the Sea Otter identified two approaches that were intended to lead to the delisting of the otter under the ESA: (1) increasing the range of the sea otters in California to lessen the risk of a single oil spill event reducing the otter population below a viable level, and (2) decreasing the likelihood of a major oil spill event within the sea otter’s range. (Recovery Plan at pp. vi, 28, Appendix D-11, 12.) Range expansion into the Southern California Bight and the Santa Barbara Channel is critical to the recovery of the sea otter. According to the July 2000 final Biological Opinion, *Reinitiation of Formal Consultation on the Containment Program for the Southern Sea Otter*, 1-8-99-FW-81, “the best available information indicates that continued, passive expansion of the range of the southern sea otter is necessary for its survival and recovery” (page 31). The literature suggests that colonization in the Channel and at the Channel Islands is critical to the survival and recovery of the sea otter; for example, in the mid-1990’s, approximately 20% of California’s sea otter population was identified at the Islands. (K. Laidre, et al, *An Estimation of Carrying Capacity for Sea Otters Along the California Coast*, Marine Mammal Science 17(2):294-309, April 2001.) New demographic and radio tagging research also emphasizes the importance of southward expansion range.

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<sup>2</sup>/ 16 U.S.C. §1362(9).

In sum, MMS must evaluate all the potential impacts from future exploration, development and production on the leases, and must consider the impacts of oil spills on sea otters and other marine wildlife.

Sincerely,

Steve Shimek  
Executive Director  
The Otter Project  
3098 Stewart Court  
Marina, CA 93933  
831/883-4159  
exec@otterproject.org

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**Comment ID:** PLN-PAC-0003-C0000003      **Date Comment Received:**  
12/15/2004 18:53:00

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo CamarilloCamarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of

issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease

Suspensions of Production or Operations, Minerals Management Service (MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

**Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be**

**conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.**

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than a statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0003-C0000004    **Date Comment Received:**  
12/15/2004 18:59:50

**Issue:** Effects on proposed easements on marine life.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir

**Commenter Address:** 925 West Campus Lane, Goleta CA 93117

**Commenter Affiliation:** UCSB

**Commenter Email Address:** birnir@math.ucsb.edu

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000005      **Date Comment Received:**  
12/15/2004 19:01:26

**Issue:** Effects on proposed easements on marine life

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir  
**Commenter Address:** 925 West Campus Lane, Goleta CA 93117  
**Commenter Affiliation:** UCSB  
**Commenter Email Address:** birnir@math.ucsb.edu

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000006      **Date Comment Received:**  
12/15/2004 21:28:23

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]  
**Commenter Address:**  
**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000007    **Date Comment Received:**  
12/15/2004 21:56:12

**Issue:** Please allow the leases to expire

**Comment Text:** To whom it may concern at Minerals Management Service, I am writing to you as a constituent living in Santa Barbara County in regards to the oil and gas leases located off the coasts of this county as well as in Ventura and San Luis Obispo. I would like to encourage you to allow these leases to expire. As a longtime resident, I have long been opposed to using this area for such exploration and its impacts on the environment. Although your agency has admittedly claimed there would be no further environmental harm if the leases are extended, I believe that this does not take into consideration the possible activities of the gas and oil companies including: exploration (including seismic surveys), drilling, production, processing, refining, transportation (including potential tankering of heavy crude oil), consumption and decommissioning. I would like to let the agency know about my concerns. Although we face considerable needs in terms of energy production, I believe that we need to develop alternatives and encourage conservation, rather than pursue our current approaches. I continue to be gravely concerned about many issues associated with the leases, including air pollution, water pollution, visual blight (from new platforms, vessels, and coastal industrial facilities), harm to marine wildlife, and risks of oil spills, etc. I urge you to suspend the leases and allow them to expire. Thank you for your consideration. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000008      **Date Comment Received:**  
12/16/2004 04:37:26

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000009      **Date Comment Received:**  
12/16/2004 12:59:38

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz  
**Commenter Address:** 963 West Campus Lane  
**Commenter Affiliation:** University of California  
**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000010    **Date Comment Received:**  
12/16/2004 15:49:46

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0003

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. In our previous comments we asked for an integration of the separate environmental reviews. We note here that the separation of possible activities involving the same platforms in the Santa Maria Basin is a particularly egregious sidestepping of the principle of cumulative review. It should be remedied. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger  
**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814  
**Commenter Affiliation:** President, League of Women Voters of California  
**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0003-C0000011      **Date Comment Received:**  
12/16/2004 18:58:11

**Issue:** Suspension – EA Comments

**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo

**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104

**Commenter Affiliation:** NRDC

**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

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December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposes suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys "have the potential for harassing or harming protected marine mammals and sea turtles" and that "[a]coustic harassment" by the planned surveys "could potentially occur" for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. See, e.g., id. at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Sword Unit.

**Comment for Period:** No time period specified

**Number of comments:** 11

**Comment ID:** PLN-PAC-0004-C0000001      **Date Comment Received:** 12/12/2004 19:50:50

**Issue:** Comments of Environmental Defense on PLN-PAC-0004: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Sword Unit.

**Comment Text:** see attached

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0004: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Sword Unit. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released "short-form" EA's do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease "units" being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior "due diligence" requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We do not concur that these leases retain active lease status at this time. In other words,

MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The “transferees”, companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency’s previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA’s.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA’s. These issues include, but are not limited to, the following:

- 1) The EA’s must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA’s. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
- 2) The EA’s must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA’s must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of the anticipated increase in OCS impacts on these species’ overall prospects for

survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.

- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.
- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.

- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.
- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.
- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called "new technology" would completely prevent any future oil spills and pollution incidents has been contradicted by the recent "Terra Nova" oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.
- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and

ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate “due diligence” in developing these leases and should not now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.

- 9) The EA’s fail to describe any alternatives other than the “no action” alternative. According to NEPA, an agency must consider not only the “no action” alternative, but also “other reasonable courses of actions” and “mitigation measures (not in the proposed action).” (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA’s.
- 10) The EA’s fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA’s should include an initial assessment of the scope of impacts to be considered in the EA’s, including:

A description of connected, cumulative and similar actions;

A description of the reasonably foreseeable activities that may take place on these leases;

Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);

Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;

Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;

Impacts to endangered, threatened, and candidate species;

Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and

Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as

alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all the far reaching effects and perils that go along with offshore production." (311 F.3d at 1162). The court concluded that the "very broad and long term effects" of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA's now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0004-C0000002    **Date Comment Received:**  
12/15/2004 07:15:52

**Issue:** EAs inadequate and not protective of threatened and endangered wildlife.

**Comment Text:** Please see attached file. If file is missing or cannot be opened, please contact Steve Shimek, The Otter Project, 831/883-4159

**Commenter Name:** Steve Shimek

**Commenter Address:** The Otter Project

**Commenter Affiliation:** The Otter Project

**Commenter Email Address:** 3098 Stewart Court

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 14, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re:    PLN-PAC-0004: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Sword Unit.

To Whom It May Concern:

Thank you for this opportunity to present these comments on the Environmental Assessments (EAs) now subject to public review. While we appreciate the opportunity to comment, we feel the EAs fail to meet the detail required by NEPA, nor do they assess the impacts – and cumulative impacts – of oil and gas operations on the tracts. The Ninth Circuit found that, “These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EAs now being circulated for public review, therefore, fail to rise to meet the clear

requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

The following comments are submitted on behalf of the 4,000 members of The Otter Project.

Our organization is also a partner in comments being submitted by the Environmental Defense Center of Santa Barbara. These comments are meant to reinforce our concerns over drilling within the range of the southern sea otter, a species listed as “threatened” under the Endangered Species Act.

Again, we want to emphasize that simple EAs are inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. Further, it should be noted that the recently-released “boiler-plate” EAs do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA).

The southern sea otter is listed as “threatened” under the Endangered Species Act (“ESA”), and is therefore also recognized as depleted under the Marine Mammal Protection Act (“MMPA”). (Final Revised Recovery Plan for the Southern Sea Otter, U.S. Fish and Wildlife Service (2003), page v, attached hereto and incorporated herein by reference, hereinafter referred to as “Recovery Plan.”) The southern sea otter is also listed as a “Fully Protected Species” in California.<sup>1</sup>

The EAs drastically under-represent the abundance of sea otters in the southern end of their range and in the Santa Barbara Channel. Sea otters were first observed south of Point Conception, in large numbers, in April of 1998 (California Department of Fish and Game, and US Fish and Wildlife Service, unpublished data). In 1998 at least 152 otters were seen in one group – over 5-percent of the population – south of Point Conception. Since 2001, sea otters appear to be “resident” between Point Conception and Santa Barbara (The Otter Project data. Data table available on request).

The EAs drastically misrepresent the distribution of sea otters in the region and the potential conflict with oil and gas exploration and production. The EAs say that otters are rare further than 2 miles seaward of the coast. No one has looked. In Monterey Bay, otters are commonly found in the middle of the Bay, in deep water, many miles from the coast. Sea otters are more often than not seen by us as we transit straight back from Point Conception back to Santa Barbara – up to 3 miles from the coast. And, we have heard reports of sea otters feeding on mussels from the pilings of currently producing oil

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<sup>1</sup>/ CA Fish and Game Code §4700(b)(8).

rigs in the Channel. Although we recognize we cannot quantify our statement, we believe that sea otters are not rare more than two miles offshore.

The southern sea otter population was listed as threatened in 1977 because of (1) its small size and limited distribution, and (2) potential jeopardy to the remaining habitat and population by oil spills (Recovery Plan, p. 10; 42 FR 2965, 1/14/1977). Both the original (1982) and the Revised (2003) Southern Sea Otter Recovery Plans consider a potential oil spill to be the primary threat to sea otter recovery. (Recovery Plan, pp. vi, 10.) The Recovery Plan concludes that (a) an oil spill is likely to occur over the next 30 years (the period during which the 36 leases would be developed) (Recovery Plan, p. 10); (b) the probability of death in sea otters as a result of contact with oil following an oil spill is likely to be no less than 50 percent (see Recovery Plan, Appendix C: *“Using Information About the Impact of the Exxon Valdez Oil Spill on Sea Otters in South-Central Alaska to Assess the Risk of Oil Spills to the Threatened Southern Sea Otter Population,”* Allan J. Brody for U.S. Fish and Wildlife Service Southern Sea Otter Recovery Team, Ventura, California, September 1, 1992); and (c) rehabilitation of oiled sea otters following a major spill is expensive, may be detrimental to some individuals and is of questionable benefit to the population (citing Estes 1991, 1998). (Recovery Plan, pp. 10, 20 – 26, Appendix B: *“Potential Impacts of Oil Spills on the Southern Sea Otter Population,”* Final Report prepared for U.S. Fish and Wildlife Service, R. Glenn Ford and Michael L. Bonnell, January 1995.) The Recovery Plan notes that after the Exxon Valdez spill, most oiled otters were not captured and saved. Id.

Limiting oil and gas development occurs early and often in the Recovery Plan (see, e.g., “Actions Needed” in the Executive Summary: “Protect the population and reduce or eliminate the identified potential limiting factors related to human activities, including: managing petroleum exploration, extraction, and tankering to reduce the likelihood of a spill along the California coast to insignificant levels.” Recovery Plan, page x.) The 36 undeveloped oil leases are cited as a reason for listing the southern sea otter as threatened. (Recovery Plan, p. 11.)

A primary threat to southern sea otter recovery remains the threat of an oil spill. (Recovery Plan, pp. vi, viii, 23, 28, 33.) As stated in the Recovery Plan, “Oil spills, which could occur at any time, could decimate the sea otter population.” (Recovery Plan, p. viii.) Major factors contributing to the mortality of oiled sea otters appear to be 1) hypothermia, 2) shock and secondary organ dysfunction, 3) interstitial emphysema, 4) gastrointestinal ulceration, and 5) stress during captivity. (T.M. Williams et al, Emerging Care and Rehabilitation of Oiled Sea Otters: A guide for Oil Spills Involving Fur-Bearing Marine Mammals, Chapter 1 – The Effects of Oil on Sea Otters: Histopathology, Toxicology, and Clinical History (1995).)

Sea otters are incredibly susceptible to oil pollution. They can be killed outright when their fur is fouled by oil. Otters have no blubber; their fur is their only insulation. If their fur is fouled, they die. Sea otters can also die from ingesting the oil. This may happen in two ways: they lick the oil off their fur, and/or they eat contaminated food.

New research from the Exxon Valdez spill reveals not only the short-term, but also the long-term effects of oil spills. (C.H. Peterson et al, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, Science 302: 2082-2086 (2003); B. Ballachey et al, *Correlates to survival of juvenile sea otters in Prince William Sound, Alaska, 1992–1993*, Can.J. Zool. 81: 1494–1510, 2003; J.L. Bodkin et al, *Sea Otter population status and the process of recovery from the 1989 ‘Exxon Valdez’ oil spill*, Mar Ecol Prog Ser. 241:237-253, 2002; R.A. Garrott et al, *Mortality of sea otters in Prince William Sound following the Exxon Valdez oil spill*, Marine Mammal Science 9:343-359, 1993; D.H. Monson et al, *Long-term impacts of the Exxon Valdez oil spill on sea otters assessed through age-dependent mortality patterns*, Proc. Natl. Acad. Sci. U.S.A. 97: 6562–6567, 2000.)

Modeling suggests that an oil spill the size of the Exxon Valdez could impact 90% of the current southern sea otter population with a minimum (immediate) range-wide mortality of 50 percent. (Recovery Plan, pp. 20, C-2; A.J. Brody, et al, *Potential impacts of oil spills on California sea otters: Implications of the Exxon Valdez in Alaska*, Marine Mammal Science 12:38-53, 1996.) Past efforts to minimize potential effects of an oil spill by relocating otters to San Nicolas Island have proven unsuccessful. (Recovery Plan, pp. 13–14, 20–22.)

In addition to being protected under the ESA, the otter is listed as depleted under the MMPA. Depleted species and their habitat require protection. To be de-listed under the MMPA the population needs to be at the “optimum sustainable population,” defined in the MMPA as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.”<sup>2</sup> According to the Recovery Plan, the lower limit of the optimum sustainable population is estimated to be approximately 8,400 individuals. (Final Revised Recovery Plan, p. vi.) Current levels are at about 2,800. (U.S. Geologic Survey, 2004.)

The Recovery Plan for the Sea Otter identified two approaches that were intended to lead to the delisting of the otter under the ESA: (1) increasing the range of the sea otters in California to lessen the risk of a single oil spill event reducing the otter population below a viable level, and (2) decreasing the likelihood of a major oil spill event within the sea otter’s range. (Recovery Plan at pp. vi, 28, Appendix D-11, 12.) Range expansion into the Southern California Bight and the Santa Barbara Channel is critical to the recovery of the sea otter. According to the July 2000 final Biological Opinion, *Reinitiation of Formal Consultation on the Containment Program for the Southern Sea Otter*, 1-8-99-FW-81, “the best available information indicates that continued, passive expansion of the range of the southern sea otter is necessary for its survival and recovery” (page 31). The literature suggests that colonization in the Channel and at the Channel Islands is critical to the survival and recovery of the sea otter; for example, in the mid-1990’s, approximately 20% of California’s sea otter population was identified at the Islands. (K. Laidre, et al, *An Estimation of Carrying Capacity for Sea Otters Along the California Coast*, Marine Mammal Science 17(2):294-309, April 2001.) New demographic and radio tagging research also emphasizes the importance of southward expansion range.

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<sup>2</sup>/ 16 U.S.C. §1362(9).

In sum, MMS must evaluate all the potential impacts from future exploration, development and production on the leases, and must consider the impacts of oil spills on sea otters and other marine wildlife.

Sincerely,

Steve Shimek  
Executive Director  
The Otter Project  
3098 Stewart Court  
Marina, CA 93933  
831/883-4159  
[exec@otterproject.org](mailto:exec@otterproject.org)

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**Comment ID:** PLN-PAC-0004-C0000003      **Date Comment Received:**  
12/15/2004 18:54:27

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004 Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service 770 Paseo Camarillo Camarillo, CA 93010-6064 Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS) Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft

environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease

Suspensions of Production or Operations, Minerals Management Service (MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

**Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to**

**assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.**

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than a statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact

analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0004-C0000004    **Date Comment Received:**  
12/15/2004 19:02:43

**Issue:** Effects on proposed easement of marine life

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir

**Commenter Address:** 925 West Campus Lane, Goleta CA 93117

**Commenter Affiliation:** UCSB

**Commenter Email Address:**

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000005      **Date Comment Received:**  
12/15/2004 21:28:49

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**  
**Commenter Affiliation:**  
**Commenter Email Address:**

**Make Name Public:** N  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000006      **Date Comment Received:**  
12/16/2004 04:38:40

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters unto high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000007      **Date Comment Received:**  
12/16/2004 12:14:18

**Issue:** Postpone easement until impact on marine life is better understood.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters unto high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Neuroscience Research Institute

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000008      **Date Comment Received:**  
12/16/2004 12:17:29

**Issue:** Postpone easement until impact on marine life is better understood.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding off the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed

easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Neuroscience Research Institute

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000009      **Date Comment Received:**  
12/16/2004 13:00:12

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whale and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding off the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause

irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz

**Commenter Address:** 963 West Campus Lane

**Commenter Affiliation:** University of California

**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000010    **Date Comment Received:**  
12/16/2004 15:51:31

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0004

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decisions, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. In our previous comments we asked for an integration of the separate environmental reviews. We note here that the separation of possible activities involving the same platforms in the Santa Maria Basin is a particularly egregious sidestepping of the principle of cumulative review. It should be remedied. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources,

economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger  
**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814  
**Commenter Affiliation:** President, League of Women Voters of California  
**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0004-C0000011      **Date Comment Received:**  
12/16/2004 18:58:41

**Issue:** Suspension – EA Comments  
**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo  
**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104  
**Commenter Affiliation:** NRDC  
**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** Y  
**Comment Source:** Internet



December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposes suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys "have the potential for harassing or harming protected marine mammals and sea turtles" and that "[a]coustic harassment" by the planned surveys "could potentially occur" for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. *See, e.g., id.* at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Gato Canyon Unit.

**Comment for Period:** No time period specified

**Number of comments:** 12

**Comment ID:** PLN-PAC-0005-C0000001      **Date Comment Received:** 12/12/2004 19:54:03

**Issue:** Comments of Environmental Defense on PLN-PAC-0005: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Gato Canyon Unit.

**Comment Text:** see attached

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0005: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Gato Canyon Unit. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released "short-form" EA's do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease "units" being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior "due diligence" requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We

do not concur that these leases retain active lease status at this time. In other words, MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The “transferees”, companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency’s previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA’s.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA’s. These issues include, but are not limited to, the following:

- 1) The EA’s must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA’s. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
- 2) The EA’s must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA’s must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of

the anticipated increase in OCS impacts on these species' overall prospects for survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.

- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.
- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.

- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.
- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.
- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called "new technology" would completely prevent any future oil spills and pollution incidents has been contradicted by the recent "Terra Nova" oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.

- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate “due diligence” in developing these leases and should not now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.
- 9) The EA’s fail to describe any alternatives other than the “no action” alternative. According to NEPA, an agency must consider not only the “no action” alternative, but also “other reasonable courses of actions” and “mitigation measures (not in the proposed action).” (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA’s.
- 10) The EA’s fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA’s should include an initial assessment of the scope of impacts to be considered in the EA’s, including:
  - A description of connected, cumulative and similar actions;
  - A description of the reasonably foreseeable activities that may take place on these leases;
  - Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);
  - Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;
  - Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;
  - Impacts to endangered, threatened, and candidate species;
  - Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware

River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing

of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all the far reaching effects and perils that go along with offshore production." (311 F.3d at 1162). The court concluded that the "very broad and long term effects" of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA's now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0005-C0000002    **Date Comment Received:**  
12/15/2004 07:19:51

**Issue:** EA inadequate and not protective of threatened and endangered wildlife

**Comment Text:** Please see attached file. If file is missing or cannot be opened, please contact Steve Shimek, The Otter Project, 831/883-4159

**Commenter Name:** Steve Shimek  
**Commenter Address:** 3098 Stewart Court  
**Commenter Affiliation:** The Otter Project  
**Commenter Email Address:** exec@otterproject.org

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** Y  
**Comment Source:** Internet  
December 14, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0005: MMS Proposal to Grant Suspension of Production for Samedan Oil Corporation's Gato Canyon Unit.

To Whom It May Concern:

Thank you for this opportunity to present these comments on the Environmental Assessments (EAs) now subject to public review. While we appreciate the opportunity to comment, we feel the EAs fail to meet the detail required by NEPA, nor do they assess the impacts – and cumulative impacts – of oil and gas operations on the tracts. The Ninth Circuit found that, “These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension

can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EAs now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

The following comments are submitted on behalf of the 4,000 members of The Otter Project.

Our organization is also a partner in comments being submitted by the Environmental Defense Center of Santa Barbara. These comments are meant to reinforce our concerns over drilling within the range of the southern sea otter, a species listed as “threatened” under the Endangered Species Act.

Again, we want to emphasize that simple EAs are inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. Further, it should be noted that the recently-released “boiler-plate” EAs do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA).

The southern sea otter is listed as “threatened” under the Endangered Species Act (“ESA”), and is therefore also recognized as depleted under the Marine Mammal Protection Act (“MMPA”). (Final Revised Recovery Plan for the Southern Sea Otter, U.S. Fish and Wildlife Service (2003), page v, attached hereto and incorporated herein by reference, hereinafter referred to as “Recovery Plan.”) The southern sea otter is also listed as a “Fully Protected Species” in California.<sup>1</sup>

The EAs drastically under-represent the abundance of sea otters in the southern end of their range and in the Santa Barbara Channel. Sea otters were first observed south of Point Conception, in large numbers, in April of 1998 (California Department of Fish and Game, and US Fish and Wildlife Service, unpublished data). In 1998 at least 152 otters were seen in one group – over 5-percent of the population – south of Point Conception. Since 2001, sea otters appear to be “resident” between Point Conception and Santa Barbara (The Otter Project data. Data table available on request).

The EAs drastically misrepresent the distribution of sea otters in the region and the potential conflict with oil and gas exploration and production. The EAs say that otters are rare further than 2 miles seaward of the coast. No one has looked. In Monterey Bay, otters are commonly found in the middle of the Bay, in deep water, many miles from the coast. Sea otters are more often than not seen by us as we transit straight back from

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<sup>1</sup>/ CA Fish and Game Code §4700(b)(8).

Point Conception back to Santa Barbara – up to 3 miles from the coast. And, we have heard reports of sea otters feeding on mussels from the pilings of currently producing oil rigs in the Channel. Although we recognize we cannot quantify our statement, we believe that sea otters are not rare more than two miles offshore.

The southern sea otter population was listed as threatened in 1977 because of (1) its small size and limited distribution, and (2) potential jeopardy to the remaining habitat and population by oil spills (Recovery Plan, p. 10; 42 FR 2965, 1/14/1977). Both the original (1982) and the Revised (2003) Southern Sea Otter Recovery Plans consider a potential oil spill to be the primary threat to sea otter recovery. (Recovery Plan, pp. vi, 10.) The Recovery Plan concludes that (a) an oil spill is likely to occur over the next 30 years (the period during which the 36 leases would be developed) (Recovery Plan, p. 10); (b) the probability of death in sea otters as a result of contact with oil following an oil spill is likely to be no less than 50 percent (see Recovery Plan, Appendix C: “*Using Information About the Impact of the Exxon Valdez Oil Spill on Sea Otters in South-Central Alaska to Assess the Risk of Oil Spills to the Threatened Southern Sea Otter Population*,” Allan J. Brody for U.S. Fish and Wildlife Service Southern Sea Otter Recovery Team, Ventura, California, September 1, 1992); and (c) rehabilitation of oiled sea otters following a major spill is expensive, may be detrimental to some individuals and is of questionable benefit to the population (citing Estes 1991, 1998). (Recovery Plan, pp. 10, 20 – 26, Appendix B: “*Potential Impacts of Oil Spills on the Southern Sea Otter Population*,” Final Report prepared for U.S. Fish and Wildlife Service, R. Glenn Ford and Michael L. Bonnell, January 1995.) The Recovery Plan notes that after the Exxon Valdez spill, most oiled otters were not captured and saved. Id.

Limiting oil and gas development occurs early and often in the Recovery Plan (see, e.g., “Actions Needed” in the Executive Summary: “Protect the population and reduce or eliminate the identified potential limiting factors related to human activities, including: managing petroleum exploration, extraction, and tankering to reduce the likelihood of a spill along the California coast to insignificant levels.” Recovery Plan, page x.) The 36 undeveloped oil leases are cited as a reason for listing the southern sea otter as threatened. (Recovery Plan, p. 11.)

A primary threat to southern sea otter recovery remains the threat of an oil spill. (Recovery Plan, pp. vi, viii, 23, 28, 33.) As stated in the Recovery Plan, “Oil spills, which could occur at any time, could decimate the sea otter population.” (Recovery Plan, p. viii.) Major factors contributing to the mortality of oiled sea otters appear to be 1) hypothermia, 2) shock and secondary organ dysfunction, 3) interstitial emphysema, 4) gastrointestinal ulceration, and 5) stress during captivity. (T.M. Williams et al, Emerging Care and Rehabilitation of Oiled Sea Otters: A guide for Oil Spills Involving Fur-Bearing Marine Mammals, Chapter 1 – The Effects of Oil on Sea Otters: Histopathology, Toxicology, and Clinical History (1995).)

Sea otters are incredibly susceptible to oil pollution. They can be killed outright when their fur is fouled by oil. Otters have no blubber; their fur is their only insulation. If their

fur is fouled, they die. Sea otters can also die from ingesting the oil. This may happen in two ways: they lick the oil off their fur, and/or they eat contaminated food.

New research from the Exxon Valdez spill reveals not only the short-term, but also the long-term effects of oil spills. (C.H. Peterson et al, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, Science 302: 2082-2086 (2003); B. Ballachey et al, *Correlates to survival of juvenile sea otters in Prince William Sound, Alaska, 1992–1993*, Can.J. Zool. 81: 1494–1510, 2003; J.L. Bodkin et al, *Sea Otter population status and the process of recovery from the 1989 ‘Exxon Valdez’ oil spill*, Mar Ecol Prog Ser. 241:237-253, 2002; R.A. Garrott et al, *Mortality of sea otters in Prince William Sound following the Exxon Valdez oil spill*, Marine Mammal Science 9:343-359, 1993; D.H. Monson et al, *Long-term impacts of the Exxon Valdez oil spill on sea otters assessed through age-dependent mortality patterns*, Proc. Natl. Acad. Sci. U.S.A. 97: 6562–6567, 2000.)

Modeling suggests that an oil spill the size of the Exxon Valdez could impact 90% of the current southern sea otter population with a minimum (immediate) range-wide mortality of 50 percent. (Recovery Plan, pp. 20, C-2; A.J. Brody, et al, *Potential impacts of oil spills on California sea otters: Implications of the Exxon Valdez in Alaska*, Marine Mammal Science 12:38-53, 1996.) Past efforts to minimize potential effects of an oil spill by relocating otters to San Nicolas Island have proven unsuccessful. (Recovery Plan, pp. 13–14, 20–22.)

In addition to being protected under the ESA, the otter is listed as depleted under the MMPA. Depleted species and their habitat require protection. To be de-listed under the MMPA the population needs to be at the “optimum sustainable population,” defined in the MMPA as “the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.”<sup>2</sup> According to the Recovery Plan, the lower limit of the optimum sustainable population is estimated to be approximately 8,400 individuals. (Final Revised Recovery Plan, p. vi.) Current levels are at about 2,800. (U.S. Geologic Survey, 2004.)

The Recovery Plan for the Sea Otter identified two approaches that were intended to lead to the delisting of the otter under the ESA: (1) increasing the range of the sea otters in California to lessen the risk of a single oil spill event reducing the otter population below a viable level, and (2) decreasing the likelihood of a major oil spill event within the sea otter’s range. (Recovery Plan at pp. vi, 28, Appendix D-11, 12.) Range expansion into the Southern California Bight and the Santa Barbara Channel is critical to the recovery of the sea otter. According to the July 2000 final Biological Opinion, *Reinitiation of Formal Consultation on the Containment Program for the Southern Sea Otter*, 1-8-99-FW-81, “the best available information indicates that continued, passive expansion of the range of the southern sea otter is necessary for its survival and recovery” (page 31). The literature suggests that colonization in the Channel and at the Channel Islands is critical to the survival and recovery of the sea otter; for example, in the mid-1990’s, approximately 20% of California’s sea otter population was identified at the Islands. (K. Laidre, et al,

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<sup>2</sup>/ 16 U.S.C. §1362(9).

*An Estimation of Carrying Capacity for Sea Otters Along the California Coast*, Marine Mammal Science 17(2):294-309, April 2001.) New demographic and radio tagging research also emphasizes the importance of southward expansion range.

In sum, MMS must evaluate all the potential impacts from future exploration, development and production on the leases, and must consider the impacts of oil spills on sea otters and other marine wildlife.

Sincerely,

Steve Shimek  
Executive Director  
The Otter Project  
3098 Stewart Court  
Marina, CA 93933  
831/883-4159  
exec@otterproject.org

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**Comment ID:** PLN-PAC-0005-C0000003    **Date Comment Received:**  
12/15/2004 18:56:41

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo Camarillo Camarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension

will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease

Suspensions of Production or Operations, Minerals Management Service (MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

**Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.**

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than an statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.

2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0005-C0000004    **Date Comment Received:**  
12/15/2004 19:04:35

**Issue:** Effects of proposed easement on marine mammals, and marine life

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding off the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir  
**Commenter Address:** 925 West Campus Lane, Goleta CA 93117  
**Commenter Affiliation:** UCSB  
**Commenter Email Address:** birnir@math.ucsb.edu

**Make Name Public:** Y  
**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000005      **Date Comment Received:**  
12/15/2004 21:29:19

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding off the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed

easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000006      **Date Comment Received:**  
12/15/2004 22:06:53

**Issue:** Please allow the leases to expire

**Comment Text:** To whom it may concern at Minerals Management Service, I am writing to you as a constituent living in Santa Barbara County in regards to the oil and gas leases located off the coasts of this county as well as in Ventura and San Luis Obispo. I would like to encourage you to allow these leases to expire. As a longtime resident, I have long been opposed to using this area for such exploration and its impacts on the environment. Although your agency has admittedly claimed there would be no further environmental harm if the leases are extended, I believe that this does not take into consideration the possible activities of the gas and oil companies including: exploration (including seismic surveys), drilling, production, processing, refining, transportation (including potential tankering of heavy crude oil), consumption and decommissioning. I would like to let the agency know about my concerns. Although we face considerable needs in terms of energy production, I believe that we need to develop alternatives and encourage conservation, rather than pursue our current approaches. I continue to be gravely concerned about many issues associated with the leases, including air pollution, water pollution, visual blight (from new platforms, vessels, and coastal industrial facilities), harm to marine wildlife, and risks of oil spills, etc. I urge you to suspend the leases and allow them to expire. Thank you for your consideration. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000007    **Date Comment Received:**  
12/16/2004 04:39:25

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000008      **Date Comment Received:**  
12/16/2004 12:15:44

**Issue:** Postpone easement until impact on marine life is better understood.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]  
**Commenter Affiliation:** Neuroscience Research Institute  
**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000009      **Date Comment Received:**  
12/16/2004 12:26:31

**Issue:**

**Comment Text:** A suspension of production should not be granted, and the lease should be allowed to expire. The proposed survey methods are harmful to marine life and may disrupt the migration patterns of whales and sharks through the channel. Production at this unit would adversely affect the nearby Marine Sanctuary. Production at this unit is strongly opposed by the local community.

**Commenter Name:** [REDACTED]  
**Commenter Address:** [REDACTED]  
**Commenter Affiliation:**  
**Commenter Email Address:**

**Make Name Public:** N  
**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT  
**Comment Period End Date:** 12/16/2004  
**File Attached to Record:** N  
**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000010      **Date Comment Received:**  
12/16/2004 13:00:47

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz

**Commenter Address:** 963 West Campus Lane

**Commenter Affiliation:** University of California

**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000011      **Date Comment Received:**  
12/16/2004 15:53:26

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0005

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger

**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814

**Commenter Affiliation:** President, League of Women Voters of California

**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0005-C0000012      **Date Comment Received:**  
12/16/2004 18:59:10

**Issue:** Suspension – EA Comments

**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo

**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104

**Commenter Affiliation:** NRDC

**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet



December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposed suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys "have the potential for harassing or harming protected marine mammals and sea turtles" and that "[a]coustic harassment" by the planned surveys "could potentially occur" for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. *See, e.g., id.* at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney

**MMS Public Connect Comment Report**

**Project Title:** MMS Proposal to Grant Suspension of Operations for Venoco, Inc.'s Cavern Point Unit.

**Comment for Period:** No time period specified

**Number of comments:** 13

**Comment ID:** PLN-PAC-0006-C0000001      **Date Comment Received:** 12/12/2004 19:58:55

**Issue:** Comments of Environmental Defense on PLN-PAC-0006: MMS Proposal to Grant Suspension of Operations for Venoco, Inc.'s Cavern Point Unit.

**Comment Text:** see attached

**Commenter Name:** Richard Charter

**Commenter Address:** 5655 College Avenue, Suite 304, Oakland, CA 94618

**Commenter Affiliation:** Environmental Defense

**Commenter Email Address:** waterway@monitor.net

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 12, 2004

Minerals Management Service  
Attn: Suspension EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Re: PLN-PAC-0006: MMS Proposal to Grant Suspension of Operations for Venoco, Inc.'s Cavern Point Unit. Comments of Environmental Defense on Environmental Assessment for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California

To Whom It May Concern:

The following comments on the recently-released Environmental Assessments (EA's) for Granting Lease Suspensions pursuant to proposed activities leading to exploratory drilling in federal waters on 36 undeveloped OCS leases offshore Pt. Conception in California are hereby submitted on behalf of the 400,000 members of Environmental Defense.

Our organization has previously submitted formal comments to MMS pursuant to Federal Register Document number 00-29921 in which your agency had originally proposed, in February of 2001, to scope a Draft Environmental Impact Statement (DEIS) in anticipation of the drilling of delineation wells on certain contested undeveloped Outer Continental Shelf (OCS) leases located in federal waters in the Santa Barbara Channel and in the Santa Maria basin. The scoping of this DEIS was subsequently terminated by the Minerals Management Service (MMS), while the preparation of the DEIS was withdrawn and never carried to fruition. We hereby incorporate those prior comments by our organization by reference in conjunction with our current comments on the Environmental Assessment (EA) documents recently produced relative to these same OCS tracts.

The current comment period on the subject EA's is inappropriate. The effect of granting a lease suspension is to *renew* a lease, and without such approval, there is no longer a lease. Approving a suspension therefore can be construed as granting new rights to the lessees when absent the suspensions all rights have been terminated. It is our position that the present lessees no longer have any vested development rights in these subject OCS

leases and that MMS is acting inappropriately at this time in releasing for review Environmental Assessment (EA) documents which appear to presume that new drilling activities will go forward on OCS tracts which remain the subject of litigation pursued by the State of California and its co-plaintiffs, to which Environmental Defense is a party as an Amicus. Further, it should be noted that the recently-released “short-form” EA’s do not and cannot be construed as representing a serious attempt by the lessees, or by MMS, at complying with the letter and/or intent of the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), nor the Outer Continental Shelf Lands Act as amended in 1978 (OCSLAA). If these leases hypothetically remained active, which they are not, a full Environmental Impact Statement (EIS) would thereby need to be prepared by MMS for each of the individual tracts and lease “units” being considered at this time, as had been originally promulgated in Federal Register Document number 00-29921, if and when the present litigation is resolved.

The OCS tracts now in question were, for the most part, leased by previous Administrations which chose to disregard the numerous environmental constraints and hazards presented by adding new OCS activities in this region. Leasing proceeded in most cases over the strong objections of shoreline local governments and their constituencies. In addition, it has been only under the arbitrary alteration and extension of longstanding prior “due diligence” requirements by former Interior Secretary James Watt that the subject tracts can be remotely construed to remain active leases at all. We do not concur that these leases retain active lease status at this time. In other words, MMS appears to now be trying to rationalize, after the fact, the policy mistakes of the past. The original lessees were on notice, at the time of the original lease sales, that these tracts would be undevelopable. The “transferees”, companies which obtained these leases secondhand from the original lessees, were likewise well aware at the time of their purchase that the leases were unlikely to have any development potential.

MMS should also recall that during 1991, former President George Bush deferred new OCS leasing offshore California until at least 2002, based on the carefully-considered recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS). At that time, the best scientific expertise in the nation determined, after a year of public hearings throughout the state, that there existed insufficient scientific information to substantiate the agency’s previous assumption that new leasing could occur off the California coast and ensure that the environment would be protected. The Clinton Administration subsequently extended those OCS deferrals until 2012, but little new scientific data has been developed by MMS in the intervening years which would suggest that the original concerns of the National Research Council regarding inadequate science have since been mitigated. It is our observation that these same concerns about inadequate science clearly apply to the OCS leases in question in the recently released EA’s.

There are a number of specific issues which must be fully addressed in the NEPA process which have not been evaluated in the draft EA’s. These issues include, but are not limited to, the following:

- 1) The EA's must fully evaluate the cumulative impacts associated with adding new geohazards assessments or delineation drilling at this time, and the documents must conduct this evaluation in the context of all other federal and state oil and gas projects currently planned or in operation in this region. New information about the permanently damaging impacts of seismic survey airgun activities on the hearing of fish and on the airgun-associated strandings of various species of whales has not been considered in the preparation of the subject EA's. None of the other environmental documents prepared by MMS in support of individual lease sales, reoffering sales, plans of exploration or development, or the MMS Five-Year OCS Leasing Program have offered an adequate comprehensive look at cumulative impacts within the full OCS Planning Area.
  
- 2) The EA's must carefully consider the fact that numerous marine ecosystems have undergone significant declines in overall health and productivity since the previous set of environmental documents were prepared for this region. Key species of abalone, urchins, and rockfish are in severe decline. The EA's must evaluate the degree to which these population declines may or may not be attributable to OCS activities, related routine OCS discharges, and to other activities. In addition, for species which are now experiencing such severe declines that they are likely to soon be listed as jeopardy species or endangered under the Federal Endangered Species Act (ESA), Section 7 consultations should be conducted to determine the impact of the anticipated increase in OCS impacts on these species' overall prospects for survival. Further, some marine species are experiencing such serious population declines that networks of fully protected marine reserves, in which all forms of pollution and extractive activities are to be precluded, are now being implemented within this region. The draft EA's fail to incorporate the anticipated OCS-related impacts on such marine reserves, and on the Pacific Fishery Management Council (PFMC) closure for the rebuilding of populations of Cow Cod in the Southern California Bight. An Executive Order on Marine Protected Areas directs federal agencies to prevent activities which harm or threaten protected marine habitat areas, and this directive should be construed to apply both the existing Channel Islands National Marine Sanctuary as well as the newly-created network of Marine Reserves now being formulated within the Sanctuary boundaries. The EA's further disregard the 2004 recommendations of the President's US Commission on Ocean Policy (USCOP) which call for improved assessments of the cumulative impacts of offshore oil and gas discharges in the marine environment.
  
- 3) Since the proposed OCS development on the subject contested leases is located such that ocean current patterns during part of the year would carry any oil spill northward into the range of the California Sea Otter, the requisite Section 7 Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service (USFWS) must be conducted. In light of recent unexplained and unanticipated declines in the recovering population of the California Sea Otter, particular consideration must be given by MMS to recent documentation of range expansion by the California Sea Otter into the study area of the EA's. It is clear that a single oil spill of significant

magnitude and duration originating from any of the subject tract locations and moving northward on ocean currents has the potential to render the California Sea Otter extinct.

- 4) The EA's fail to evaluate and identify effective mitigation plans for all sensitive habitats within range of ocean currents of the proposed drilling activities, including the Channel Islands National Marine Sanctuary to the South, the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries to the north, as well as ignoring necessary mitigation measures for particularly sensitive coastal resources such as rocky substrate, intertidal communities, kelp forest ecosystems, and river mouths and harbor entrances. Further, the pending EA'S must evaluate the proposed boundary expansion of the Channel Islands National Marine Sanctuary and the probability that such boundary expansion may very well encompass some or all of the federal OCS tracts now under consideration for geohazards surveys and subsequent delineation drilling and would place these tracts within the boundaries of a National Marine Sanctuary. Further, the EA's must evaluate the implications of delineation drilling impacts on tracts in all West Coast OCS Planning Areas on which Congress has recently renewed a legislative moratorium on new OCS leasing for the twenty-fourth consecutive year. In addition, the EA's fail to evaluate the implications of the fact that the voters of the County of San Luis Obispo have enacted a local onshore facilities ordinance which will apply to any onshore OCS support facility on the coastline of that county.
- 5) Oil spill preparedness and response capabilities have continued to prove wholly inadequate and ineffective. In addition, while MMS and the State of California have worked cooperatively to require pipeline transport of produced oil from the OCS to shore, subsequent experiences, such as the Torch pipeline spill, have reminded us that pipelines are not the safety panacea we once thought. In addition, the massive scale of the tragic subterranean oil spills at Avila Beach and the Nipomo Dunes in San Luis Obispo County, while not directly of OCS origin, have demonstrated the reluctance of the petroleum industry to confront their mistakes and rectify them in an effective manner. A nationwide rash of pipeline-related ruptures, explosions, and deaths in recent years reminds us that pipeline transport of oil as well as hydrogen-sulfide-rich natural gas near schools, housing, and public facilities poses a danger to the public, and needs further evaluation. The EA's fail to consider that peer-reviewed scientific studies conducted in the monitoring phase of the Exxon-Valdez oil spill in Alaska's Prince William Sound have demonstrated that Polycyclic Aromatic Hydrocarbon (PAH) compounds associated with the remaining residual oil from that spill, at levels of one part per billion, are producing life-cycle mutagenic damage to the eggs of Pink salmon (Short, et al, Auke Bay Labs, NMFS) in affected marine waters.
- 6) According to the 2001 Federal Register notice, the oil industry proposes 5-8 delineation drilling wells that may lead to the eventual development and production of oil and gas on an undisclosed number of leases in the Santa Maria Basin and western Santa Barbara Channel. We oppose any exploration or development of these leases for several reasons. As stated in substantial prior correspondence to the

Minerals Management Service and the Department of Interior, we have pointed out that substantial changes in circumstances have recently occurred and considerable new information is available that warrants a prohibition on development of these leases.

- 7) The subject leases were issued between 1968 and 1984, and are inconsistent with current regulations, programs and policies. For example, two national marine sanctuaries now exist in close proximity to these leases. The integrity of these sanctuaries is threatened by the potential impacts of oil and gas development. In addition, federal and state air and water quality standards have been strengthened. Also, new information is available regarding the likelihood and effect of oil spills caused by offshore oil and gas development. We now know that oil spills can have much greater adverse environmental effects than previously thought, and we know that offshore oil spills are much more difficult to clean up than was thought at the time these leases were sold. Assurances from the oil industry that so-called “new technology” would completely prevent any future oil spills and pollution incidents has been contradicted by the recent “Terra Nova” oil spill off of the coast of Newfoundland in Canada. New information is also available that confirms the failure of the Southern Sea Otter translocation program and thus demonstrates the increased threat of offshore oil and gas development to this important listed species.
- 8) Agencies and the public currently have more information regarding the many ways in which offshore oil and gas development conflicts with other valuable coastal and ocean industries than was the case at the time these leases were promulgated. Our onshore communities have adopted stricter regulations and disincentives for accommodation of offshore development. Our state has taken steps to not only limit oil and gas development in state waters, but also to communicate its opposition to further development in federal OCS waters off our coast. Finally, the oil operators have failed to demonstrate “due diligence” in developing these leases and should not now be allowed to belatedly extract these limited potential hydrocarbon resources. For all these reasons, we oppose exploration and development of these leases.
- 9) The EA’s fail to describe any alternatives other than the “no action” alternative. According to NEPA, an agency must consider not only the “no action” alternative, but also “other reasonable courses of actions” and “mitigation measures (not in the proposed action).” (40 CFR §1508.25(b).) To ensure meaningful public input, MMS should include these proposed alternatives in the EA’s.
- 10) The EA’s fail to include an analysis of potential impacts, including direct, indirect and cumulative impacts. (40 CFR §1508.25(c).) Again, to ensure meaningful public input, the EA’s should include an initial assessment of the scope of impacts to be considered in the EA’s, including:

A description of connected, cumulative and similar actions;

A description of the reasonably foreseeable activities that may take place on these leases;

Direct, indirect and cumulative impacts from the proposed actions, including impacts resulting from reasonably foreseeable development and production activities (including but not limited to: extraction, production, transportation to shore, processing, transportation to refineries and distribution facilities);

Impacts to the Monterey Bay, Gulf of the Farallones, Cordell Bank, and Channel Islands National Marine Sanctuaries;

Impacts to the Southern Sea Otter, including disclosure of the most recent evaluation of the translocation program and the most recent biological opinion, and an assessment of impacts relating thereto;

Impacts to endangered, threatened, and candidate species;

Impacts from oil spills, including an analysis of the most recent information regarding the potential extent of an oil spill and the difficulties realized in responding to and cleaning up oil spills (see, for example, Exxon Valdez oil spill, Platform Irene oil spill, American Trader oil spill, Delaware River oil spill, Terra Nova oil spill). Include information from No Safe Harbor (NRDC, 1990), Safety at Bay (NRDC, December 1992), and Crude Awakenings (Santa Monica BayKeeper and Environment Now, August 2000);

Impacts to water quality, including an analysis of current state and federal water quality standards;

Impacts to air quality, including an assessment pursuant to the 1990 Clean Air Act Amendments; new federal, state and local air quality standards; conformity with the California and relevant County air quality implementation plans; and new information regarding the attainment status of the affected onshore jurisdictions and the availability of offsets;

Impacts to hard bottom habitat from anchoring and discharge of drilling muds and cuttings;

Impacts from decommissioning, including potential abandonment at sea;

Impacts to commercial fishing from vessel traffic, interference with gear, loss of catch, seismic and other exploratory activities, area preclusion caused by the use and construction of offshore facilities and pipelines, and snagging caused by debris left on the seafloor following abandonment. Additionally, impacts to fisheries from oil spills should be addressed;

Impacts to other ocean users and industries (e.g., recreational fishing, diving, boating, tourism, etc.), including both environmental and socioeconomic impacts. Include information from California's Ocean Resources: An Agenda for the Future (California Resources Agency, March 1997, and updated as the California Ocean Plan, October 2004) and The Costs of Oil and Gas Development Off the Coast of San Luis Obispo County (San Luis Obispo Chamber of Commerce and the Environmental Center of San Luis Obispo, May, 1998);

Conflicts with state and local efforts to protect our coast (e.g., HR Resolution No. 20, 1999; 1994 California Coastal Sanctuary Act; San Luis Obispo County Measure A, Santa Barbara County Measure A; Santa Barbara and San Luis Obispo County LCP policies; Morro Bay City regulations; City of Santa Barbara regulations, etc.);

Impacts of potential expansion of the Channel Islands National Marine Sanctuary;

Impacts relating to the May 26, 2000 Executive Order #13158 regarding Marine Protected Areas; A reasonable range of alternatives, including both alternatives to the drilling activities themselves (such as a requirement that drilling muds and cuttings must be disposed onshore, and that the timing of the drilling activities must be regulated to minimize impacts to air quality, other ocean users, and sensitive marine wildlife) as well as alternatives to the reasonably foreseeable development and production of these resources (such as energy conservation and efficiency, clean and renewable energy alternatives, and use of recycled materials in place of the asphalt that will be produced from the heavier oil in the Santa Maria Basin).

MMS is well aware that the agency's proposals for new expansion of federal OCS drilling activities have proven to be one of the most contentious public policy issues in the history of California. As MMS now apparently proposes to restart new geohazards assessments, delineation drilling, and related activities on the litigated tracts being considered in the present EA's, it should keep in mind that the fundamental concerns of the public, of the scientific community, of local officials, and of the congressional delegation have not changed. We concur with the position of the National Academy of Sciences, with former President George Herbert Walker Bush, Sr. and with President Clinton that the science has not yet been done which would justify a decision by MMS that new drilling offshore California can be accomplished safely and without jeopardizing our state's fragile coastal environment.

Thank you for this opportunity to present these comments on the EA's now subject to public review. The Ninth Circuit found that, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's

coast, with all the far reaching effects and perils that go along with offshore production.” (311 F.3d at 1162). The court concluded that the “very broad and long term effects” of the lease suspensions are analogous to the effect of a lease sale. (311 F.3d at 1174). The granting of a suspension can thus be viewed as tantamount to approving development of a lease, and, as such, will lead to future activities that have a significant effect on the environment. The subject EA’s now being circulated for public review, therefore, fail to rise to meet the clear requirement for a Programmatic Environmental Impact Statement (EIS) which is required subject to NEPA in this instance.

Sincerely,

Richard Charter  
Marine Conservation Advocate  
Oceans Program  
Environmental Defense  
5655 College Avenue, Suite 304  
Oakland, CA 94618

cc: U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Lois Capps  
California Resources Secretary Michael Chrisman

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**Comment ID:** PLN-PAC-0006-C0000002    **Date Comment Received:**  
12/15/2004 18:47:57

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo Camarillo Camarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

**Subject:** Comments on Draft Environmental Assessments for Granting Lease  
Suspensions of Production or Operations, Minerals Management Service  
(MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP.

The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and development activities that would occur after the suspension period ends, reasonably foreseeable and connected actions, and requests for MMS to prepare an environmental impact statement to address exploration and development activities. Although the administrative activities associated with the Cavern Point Unit lease suspensions would be completed by Venoco

and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than a statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0006-C0000003    **Date Comment Received:**  
12/15/2004 18:59:32

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo Camarillo Camarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill

Office of Environmental Evaluation, Pacific OCS Region

Minerals Management Service

770 Paseo Camarillo

Camarillo, CA 93010-6064

**Subject:** Comments on Draft Environmental Assessments for Granting Lease  
Suspensions of Production or Operations, Minerals Management Service  
(MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

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and/or their consultant(s) in an office setting and involve no physical activities on the unit itself, we wish to reiterate that potential air quality impacts in Ventura County may result

from future activities resulting from approval of the project, based on actions following lease suspension. Section 4.1 of the environmental assessments (Air Quality) discusses air quality issues from lease suspensions, however, there is no such air quality discussion in the Cavern Point Unit environmental assessment, other than an statement that the Ventura County Air Pollution Control District would review, as needed, future Development and Production Plans.

During the public scoping process, we submitted comments on the proposed lease suspensions. As far as we can ascertain, those issues have not been addressed. We recommend that the environmental assessments be expanded to include a discussion of potential air quality impacts to Ventura County if development activities ensue, as well as other reasonably foreseeable and connected actions.

Specifically, we request that the environmental assessments discuss:

1. Potential air quality impacts on Ventura County. Ventura County is nonattainment for state and federal ozone standards and state particulate standards. Ventura County comprises a portion of the South Central Coast Air Basin adjacent to and downwind of the project sites. Because the subject leases are adjacent to and upwind of Ventura County, it is reasonable to assume that any future lease holding development and production operations will affect air quality in Ventura County, perhaps to a greater degree than Santa Barbara County. The air quality analyses should consider all emissions sources associated with any exploratory, development, or production activities that would result from approval of the revised exploration and production plans. Any significant air quality impacts identified in the environmental assessments should be mitigated pursuant to NEPA requirements.
2. The Cavern Point Unit environmental assessment should be revised to include an air quality section similar to the other lease discussions. It should contain the same regulatory and environmental setting background discussion, significance criteria, impact analysis, air emissions modeling and mitigation measures, conclusions and cumulative analysis.

If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

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**Comment ID:** PLN-PAC-0006-C0000004    **Date Comment Received:**  
12/15/2004 19:00:04

**Issue:** Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations

**Comment Text:** December 15, 2004Mr. Maurice Hill Office of Environmental Evaluation, Pacific OCS Region Minerals Management Service770 Paseo Camarillo Camarillo, CA 93010-6064Subject: Comments on Draft Environmental Assessments for Granting Lease Suspensions of Production or Operations, Minerals Management Service (MMS)Dear Mr. Hill: Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County. Action on the project will be to grant, deny, or take no action on the suspension requests. Approval of suspensions could provide an extension of a lease in certain circumstances. Some of the lease requests involve geohazards or other surveys to assist in the preparation of revised Exploration Plans. These surveys would be conducted after the suspension is granted. We recognize that the granting of a suspension will not authorize any exploration or development and production operations. The draft environmental assessment was prepared to determine if there would be any significant environmental impacts from granting the SOP. The draft environmental assessment lists a number of issues raised by federal, state, other local agencies and the public during the scoping process. These comments include: issues pertaining to environmental impacts associated with exploration and

**Commenter Name:** Alicia Stratton

**Commenter Address:** 669 County Square Drive, Ventura CA 93003

**Commenter Affiliation:** Ventura County Air Pollution Control District

**Commenter Email Address:** alicia@vcapcd.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet

December 15, 2004

Mr. Maurice Hill  
Office of Environmental Evaluation, Pacific OCS Region  
Minerals Management Service  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

Subject: Comments on Draft Environmental Assessments for Granting Lease  
Suspensions of Production or Operations, Minerals Management Service  
(MMS)

Dear Mr. Hill:

Air Pollution Control District staff has reviewed the draft environmental assessment for the project. The project consists of granting suspensions of production (SOP) or operations for nine units and one non-unitized undeveloped oil leases located on the federal outer continental shelf offshore California. Potential environmental impacts of granting the lease suspension requests are analyzed in six environmental assessments prepared by MMS. One of the environmental assessments addresses the Cavern Point Unit leases offshore Ventura County. The Cavern Point Unit consists of leases OCS-P 0210 and 0527, operated by Venoco Inc. The project's other five assessments address four other operators and their leases offshore in Santa Barbara County.

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If you have any questions, please call me at (805) 645-1426 or email me at [alicia@vcapcd.org](mailto:alicia@vcapcd.org)

Sincerely,

Alicia Stratton  
Planning and Monitoring Division

12/15/2004 19:06:07

**Issue:** Effects of proposed easement on the gray whales, and other marine life.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Bjorn Birnir

**Commenter Address:** 925 West Campus Lane, Goleta CA 93117

**Commenter Affiliation:** UCSB

**Commenter Email Address:**

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000006    **Date Comment Received:**  
12/15/2004 21:01:37

**Issue:** sonic surveying is destructive to marine life

**Comment Text:** Seismic surveying with sonic arrays, as is proposed for the exploration period, has been shown to be harmful to whales and other marine mammals. It should not be permitted in our coastal waters.

**Commenter Name:** Harold Marcuse

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000007    **Date Comment Received:**  
12/15/2004 21:29:46

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free,

stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:**

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000008      **Date Comment Received:**  
12/15/2004 22:08:49

**Issue:** Please allow the leases to expire

**Comment Text:** To whom it may concern at Minerals Management Service, I am writing to you as a constituent living in Santa Barbara County in regards to the oil and gas leases located off the coasts of this county as well as in Ventura and San Luis Obispo. I would like to encourage you to allow these leases to expire. As a longtime resident, I have long been opposed to using this area for such exploration and its impacts on the environment. Although your agency has admittedly claimed there would be no further environmental harm if the leases are extended, I believe that this does not take into consideration the possible activities of the gas and oil companies including: exploration (including seismic surveys), drilling, production, processing, refining, transportation (including potential tankering of heavy crude oil), consumption and decommissioning. I would like to let the agency know about my concerns. Although we face considerable needs in terms of energy production, I believe that we need to develop alternatives and encourage conservation, rather than pursue our current approaches. I continue to be gravely concerned about many issues associated with the leases, including air pollution, water pollution, visual blight (from new

platforms, vessels, and coastal industrial facilities), harm to marine wildlife, and risks of oil spills, etc. I urge you to suspend the leases and allow them to expire. Thank you for your consideration. [REDACTED]

**Commenter Name:** [REDACTED]

**Commenter Address:** [REDACTED]

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000009      **Date Comment Received:**  
12/16/2004 04:40:12

**Issue:** Public Comment on Opening the Federal Oil Leases to Explorations

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: *Marine Mammals and Noise*, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause

irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** [REDACTED]

**Commenter Address:**

**Commenter Affiliation:**

**Commenter Email Address:** [REDACTED]

**Make Name Public:** N

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000010      **Date Comment Received:**  
12/16/2004 12:16:43

**Issue:** Postpone easement until impact on marine life is better understood.

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air-guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free, stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air-gun arrays is likely in violation of the National Environmental

Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up to high energy seismic surveying. We request that the proposed easements are postponed until the effects on the marine life are determined.

**Commenter Name:** Maura Jess

**Commenter Address:** [REDACTED]

**Commenter Affiliation:** Neuroscience Research Institute

**Commenter Email Address:** [REDACTED]

**Make Name Public:** Y

**Make Address Public:** N

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000011      **Date Comment Received:**  
12/16/2004 13:01:18

**Issue:**

**Comment Text:** Recent research has shown that noise can have dramatic effects on whales and dolphins, seals and sea lions and fish. These effects range from stress and reduced availability of prey and interruptions of normal behavior and migration paths, to very serious damage to ears and body tissue resulting in permanent damage to body parts or death. Some of these effects are spelled out in a book by Richardsson et al.: Marine Mammals and Noise, published by Academic Press, San Diego, 1995. Recent studies by the Navy show that low frequency sound can cause the blue and fin whales feeding of the California Coast to change their behavior and effect the mother-calf communications of the gray whales causing them to alter their migratory routes. High energy seismic surveying is a particularly intrusive method in the acoustic marine environment and can be very detrimental to whales and dolphins in addition to fish. In these surveys a whole array of air guns is towed behind a ship, firing a multitude of high pressure air into the water so that sound waves can propagate to the ocean floor. These sound waves then penetrate the rock and are reflected back to the sensors giving information about geology of the ocean floor and oil deposits. To be caught in the paths of such a hail of high pressure sound waves may spell certain death for the unfortunate whales and dolphins. In 2002 two Cuvier's beaked whales that appeared to be in good physical condition and disease-free,

stranded and died on Isla San Jose in the Gulf of California, in proximity of geology research involving seismic surveying. The US courts have found that operation of air gun arrays is likely in violation of the National Environmental Policy Act and the Marine Mammal Protection Act and likely to cause irreparable harm to the beaked whales in the Gulf of California where surveying was occurring. The proposed easements will open a continuing blocks of coastal waters up

**Commenter Name:** Jon Cruz

**Commenter Address:** 963 West Campus Lane

**Commenter Affiliation:** University of California

**Commenter Email Address:** cruz@soc.ucsb.edu

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000012     **Date Comment Received:**  
12/16/2004 15:54:38

**Issue:** Draft Environmental Assessments for Granting Suspensions of Production or Operations for Certain Offshore Leases, Project PLN-PAC-0006

**Comment Text:** The League of Women Voters of California finds it necessary to repeat comments made in August on the scoping of these environmental assessments. We believe that assessments limited to the first phase of the process of extending leases give an insufficient level of review of the possible consequences of the suspension decision. Because so little has been done with these leases, the chain of events that would be enabled by a positive decision is essentially the same as that which follows upon a lease sale. A lease sale is evaluated by an environmental impact statement (EIS) which covers all reasonably foreseeable effects of that action. In this case the original EISs are outdated; we now know much more about the ecology of the area and we have stricter standards, e.g., for air quality and water quality. Furthermore, an expansion of the programs of the Channel Islands National Marine Sanctuary is underway and a possible enlargement of the area of the sanctuary is under study. We believe full EISs are necessary. The League of Women Voters of California believes that any development of offshore oil and gas should occur only in the context of policies and procedures that protect the environment to the maximum

extent feasible. Our coast and adjacent waters are precious resources, economically as well as environmentally, and potential impacts should be examined now, before further commitments are made.

**Commenter Name:** Jacqueline Jacobberger

**Commenter Address:** 801 12th Street, Suite 220, Sacramento, CA 95814

**Commenter Affiliation:** President, League of Women Voters of California

**Commenter Email Address:** lwvc@lwvc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** N

**Comment Source:** Internet

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**Comment ID:** PLN-PAC-0006-C0000013      **Date Comment Received:**  
12/16/2004 18:59:43

**Issue:** Suspension – EA Comments

**Comment Text:** Please see attached.

**Commenter Name:** Drew Caputo

**Commenter Address:** 111 Sutter Street, 20th Floor, San Francisco, CA 94104

**Commenter Affiliation:** NRDC

**Commenter Email Address:** dcaputo@nrdc.org

**Make Name Public:** Y

**Make Address Public:** Y

**Submitter Type:** CITIZEN COMMENT

**Comment Period End Date:** 12/16/2004

**File Attached to Record:** Y

**Comment Source:** Internet



December 16, 2004

Minerals Management Service  
Attn: Suspension – EA Comments  
Office of Environmental Evaluation  
770 Paseo Camarillo  
Camarillo, CA 93010-6064

To the Minerals Management Service:

On behalf of the Natural Resources Defense Council and the League for Coastal Protection, we write to comment on the draft environmental assessments (“EAs”) concerning the Minerals Management Service’s (“MMS’s”) proposal to grant suspensions of production or operations for 36 oil-and-gas leases off the central California coast.

The draft EAs on the proposed suspensions violate the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.* First, MMS illegally has refused to consider the environmental consequences of future exploration and development activities on the leases. Second, because significant impacts may result from the activities proposed during the terms of the proposed suspensions, MMS cannot rely on a suite of EAs but must instead prepare a comprehensive environmental impact statement (“EIS”) on the proposed suspensions. Third, MMS has failed to consider a reasonable range of alternatives. Fourth, the draft EAs fail to present an adequate environmental analysis of the alternatives under consideration, including the alternative of denying the requested suspensions and allowing the leases to expire. Fifth, MMS has improperly segmented its pending lease-suspension decisions into a series of individual EAs, in an apparent effort to avoid preparing an EIS, and has failed to conduct an adequate analysis of the cumulative impacts of granting suspensions for 36 leases in total.

In order to comply with NEPA, MMS must prepare a comprehensive EIS that fully analyzes the proposed suspensions and future exploration and development activities on the leases.

I. NEPA Requires Consideration of Future Exploration and Production Activities as Part of MMS’s NEPA Analysis of the Proposed Suspensions.

MMS has violated NEPA by failing to consider future exploration and development activities in its NEPA analysis on the proposed suspensions. The suspensions requested by the leaseholders here are closely tied to future exploration and development activities on the leases. Indeed, suspensions cannot be granted here unless they are necessary “to facilitate proper development” of the lease in question. 43 U.S.C. § 1334(a)(1)(A). The suspensions proposed here are tied especially closely to exploratory drilling intended to commence on some of the leases at the expiration of the suspensions. Given these relationships between

the proposed suspensions and future exploration and development activities, NEPA's requirements for comprehensive, forward-looking environmental analysis demand that future exploration and development activities be analyzed as part of MMS's NEPA analysis on the proposed suspensions. Since these future exploration and development activities present substantial risks to the environment, including risks of oil spills during oil drilling or transport, MMS must prepare an EIS on the proposed suspensions.

A. Future Exploration and Development Activities Must Be Analyzed As Indirect Effects of the Proposed Suspensions.

NEPA requires evaluation of the indirect effects of an agency action so long as those effects are "reasonably foreseeable." 40 C.F.R. § 1508.8(b). Future exploration and development activities are a reasonably foreseeable consequence of the lease suspensions under consideration by MMS here. Indeed, making such future activities possible is the very purpose of the requested suspensions. As the Ninth Circuit held earlier in this case, "These lease suspensions represent a significant decision to extend the life of oil exploration and production off of California's coast, with all of the far reaching effects and perils that go along with offshore oil production." California v. Norton, 311 F.3d 1162, 1173 (9th Cir. 2002). In order to grant the suspensions requested by these particular leaseholders, MMS must demonstrate, *inter alia*, that the suspensions are necessary "to facilitate proper development" of the leases in question. 43 U.S.C. § 1334(a)(1)(A).<sup>1</sup> Thus, the very purpose of the suspensions and the legal criteria for issuing them demonstrate the close nexus between the suspensions and subsequent exploration and development activities. As such, these future exploration and development activities are reasonably foreseeable consequences of granting the proposed suspensions and must be considered in MMS's NEPA analysis of the suspensions.

The suspensions at issue here are linked especially closely to exploratory drilling planned for the near future on several of the leases. MMS acknowledges that the acoustic surveys planned for certain Aera and Samedan leases during the requested suspensions are intended "to determine geohazards associated with the potential drilling of delineation wells" and that the biological surveys planned for certain Aera leases are intended "to identify hard bottom habitat that could be impacted by the potential drilling of delineation wells." Aera EA at 1-2. See also Aera's Request for Suspension for Point Sal Unit at 4 (Aug. 20, 2004) ("To prepare a revised [exploration plan] ..., Aera would have to acquire shallow hazards data" during the proposed suspension period.). In other words, these activities are directly linked to the exploratory drilling that would follow the proposed suspensions and are intended to facilitate that drilling. From a temporal standpoint, the separation between the proposed suspensions and the planned exploratory drilling is virtually non-existent. Aera's suspension requests, for example, indicate that the requested suspensions would end on the very same day on which exploratory drilling would commence on at least some of the leases. See, e.g., id. at 7. In an obvious effort to make the proposed suspensions look as insignificant as possible, MMS wrote Aera last

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<sup>1</sup> MMS also must demonstrate that granting the requested suspensions is "in the national interest ..." 43 U.S.C. § 1334(a)(1)(A).

month to “clarify” that “drilling operations” themselves will not occur during the proposed suspension periods themselves. Letter from Peter Tweedt, MMS, to T. E. Enders, Aera Energy (Nov. 1, 2004) (attached to Aera EA as App. 3). The agency’s stated rationale for this “clarification” is revealing. According to MMS, since “drilling is an activity that will hold the unit” in which the drilling is occurring, “a suspension is not needed” where drilling is occurring. *Id.* The implications of this rationale, though, are that a suspension is needed up until the exact point that drilling actually commences and that the proposed suspension would be in place until the very minute or even second before the exploratory drilling commences. Among their many other flaws, MMS’s EAs fail to explain how much time would elapse between the end of the proposed suspension periods and the commencement of exploratory drilling on the leases. We specifically ask MMS to state the amount of time that would elapse between the end of the proposed suspension periods and the beginning of exploratory drilling. The record indicates already, though, that little time would elapse between the end of the proposed suspensions and the beginning of delineation drilling. This close temporal relationship between the suspensions and the planned drilling is further evidence that this exploratory drilling is a reasonably foreseeable effect of granting the proposed suspensions.

In its draft EAs, MMS offers two reasons for refusing to consider future exploration and development activities in its NEPA analysis on the suspensions. First, MMS notes that those future exploration and development activities “will not occur while the [leases] are under suspension ...” *E.g.*, Aera EA at 3-3. That fact is legally irrelevant to MMS’s duty to analyze those activities here, since NEPA requires future, indirect effects to be considered in a NEPA analysis so long as those effects are reasonably foreseeable. The governing NEPA regulation specifically requires consideration of indirect effects that occur “later in time” than the immediate action under review, so long as those “later in time” indirect effects are “reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Thus, the fact that exploration and development activities will occur after the close of the proposed suspension periods does not exempt MMS from addressing these future activities in its NEPA analysis of the suspensions. Also, from a factual standpoint, MMS is at best splitting hairs when it stresses that exploration and development activities will occur after the suspension periods, since the record indicates that exploratory drilling will occur on at least some of the leases immediately upon the close of the suspension periods. See supra.

Second, MMS notes that future exploration and development activities would “require separate review and approval by MMS and other appropriate agencies before they may occur.” *E.g.*, Aera EA 3-3. That fact is also legally irrelevant to MMS’s duty to consider these future activities now, since the law is clear that future environmental-review obligations do not release an agency from its NEPA obligation to consider reasonably foreseeable future effects of the agency action directly at hand. For example, in *Village of False Pass v. Clark*, 733 F.2d 605 (9th Cir. 1984), the Ninth Circuit considered the NEPA obligations that apply to a lease sale pursuant to the Outer Continental Shelf Lands Act (“OCSLA”). The court held: “The lease sale itself does not directly mandate further activity that would raise an oil spill problem, [citation omitted],

but it does require an overview of those future [oil spill] possibilities” under NEPA. Id. at 616 (emphasis added). The court then specifically relied on the EIS’s analysis of a potential oil spill of 10,000 barrels or more as providing a sufficiently detailed analysis of oil-spill issues to satisfy NEPA at that stage of the oil-leasing process. Id. In other words, the court held that a NEPA analysis on the sale of an oil lease, a sale which did not mandate actual production of oil from the lease and which would be followed by additional NEPA compliance at the exploration and development stages, had to analyze the consequences of an oil spill during potential future oil-production operations on the lease – just not in as much detail as the plaintiffs there argued was required at that stage of the leasing process. Thus, MMS’s obligation to conduct additional environmental review before allowing future exploration and development activities on the leases does not excuse the agency from addressing those future activities in its NEPA analysis of the proposed suspensions. “NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.” Kern v. United States Bureau of Land Management, 284 F.3d 1062, 1072 (9th Cir. 2002).

Tellingly, MMS did analyze future exploration and development activities in the EISs it prepared on the lease sales for these leases decades ago. See, e.g., Bureau of Land Management, Final EIS for OCS Lease Sale 53 (Sept. 1980) (analyzing, inter alia, effects of oil spills, onshore and offshore manmade structures, vessel traffic, noise, effluents, and air emissions). It was equally true then that future exploration and development activities on the leases would “require separate review and approval by MMS and other appropriate agencies before they may occur” – but that fact did not interfere with MMS’s obligation to analyze those future exploration and development activities in its lease-sale EISs. Moreover, the Ninth Circuit has analogized the lease suspensions in this case to a lease sale, stating: “Although a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do [certain] highly specific activities ...” California v. Norton, 311 F.3d at 1174. Just as MMS was required to consider future exploration and development activities in its NEPA analysis of the proposed lease sales for these leases, MMS must analyze future exploration and development activities in its NEPA analysis of the proposed suspensions for these leases.

It is especially important that MMS update the analysis from its lease-sale EISs about future exploration and development activities on the leases in light of the important circumstances that have changed since that analysis was performed many years ago. The administrative record for California v. Norton is replete with examples of such changed circumstances. For example, the threatened southern sea otter has extended its range over the past 20 years into areas within and nearby many OCS leases while continuing to struggle to rebuild. See Letter from California Coastal Commission to Secretary of the Interior and Director of MMS, July 27, 1999 (3 AR 0746). Other examples of circumstances that have changed since the original lease sale EISs include: changes in laws that protect ocean and coastal environments, including the Oil Pollution Act of 1990; new oil spill contingency standards; the listing of federal endangered marine

species; and the establishment of new National Marine Sanctuaries, including the Channel Islands and Monterey Bay National Marine Sanctuaries. See Letter from Senators Barbara Boxer and Dianne Feinstein and Congresswoman Lois Capps to Secretary of the Interior, July 28 1999 (3 AR 0748). MMS's limited discussion in its EAs of the effects of the proposed suspension activities on ocean life is insufficient to meet NEPA's requirements, especially in light of these changes.

The state of the region's fisheries is another example of significantly changed circumstances since the initial environmental reviews were conducted for these leases. Federal fisheries management was in its nascent stage at the time of the lease sale EISs. For example, the initial fishery management plan ("FMP") for Pacific Coast Groundfish was not approved and implemented until October 5, 1982. Prior to that time, management of Pacific groundfish was regulated by the states of Washington, Oregon, and California. Since 1999, eight of the 24 species of Pacific groundfish that have been fully assessed have been declared overfished. Moreover, it was not until the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act that FMPs were required to identify essential fish habitat, actively seek to reduce bycatch, implement conservation measures to prevent overfishing, and to promote rebuilding of already overfished species. MMS makes no mention of the impacts of the proposed suspensions on these overfished species or on the efforts towards attaining more sustainable fisheries, as federal law now requires.

Future exploration and development activities are a reasonably foreseeable indirect effect of the lease suspension proposed by MMS here. As such, they must be fully analyzed under NEPA in an EIS on the proposed suspensions.

B. Future Exploration and Development Activities Must Be Analyzed as Cumulative Effects of the Proposed Suspensions.

NEPA requires evaluation of the cumulative impact "which results from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions." 40 C.F.R. § 1508.7 (emphasis added). For similar reasons to those stated above, future exploration and development activities are "reasonably foreseeable future actions" that MMS must evaluate within its NEPA review of the suspensions themselves. Courts have consistently enforced the requirement to consider cumulative impacts in analogous situations. See Native Ecosystems Council v. Dombeck, 304 F.3d 886, 895 (9th Cir. 2002) (requiring Forest Service to include cumulative impact assessments for all future road density amendments within the EAs for each individual timber sale); see also Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (requiring BLM to quantify the cumulative emissions from potential development of BLM land in Las Vegas Valley); Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425, 1434 (C.D. Cal. 1985) (criticizing the Corps of Engineers for having "tunnel vision" for not originally considering the secondary and cumulative effects of approving a permit to place large boulders along the banks of the Colorado River as part of a residential development project). MMS is obligated to consider the cumulative impacts

of post-suspension exploration and development activities as part of the review of the suspensions themselves. Such impacts are reasonably foreseeable, especially where several of the suspension requests include specific plans to spud delineation wells on the very day the suspensions expire.

“Nor is it appropriate to defer consideration of cumulative impacts to a future date.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1380 (9th Cir. 1998) (holding that Forest Service timber sale EIS must consider the cumulative impacts on old growth habitat of all reasonably foreseeable future timber sales in the area in addition to the impacts of the sale being reviewed). MMS may not shirk its responsibilities under NEPA to consider the impacts of exploration and development activities by asserting that such review will occur at a later stage. In Neighbors of Cuddy Mountain, the Ninth Circuit held that the cumulative effect of future timber sales in the region must be considered regardless of the fact that such sales were unrelated to the immediate sale being reviewed. In this case, future exploration and development activities on these leases are not merely related to the grant of the suspensions but are utterly dependent on them. NEPA requires that MMS analyze these cumulative impacts at this stage in the process.

C. The Proposed Suspensions and Future Exploration and Development Activities are Connected Actions.

MMS’ failure to consider the effects of post-suspension activities violates NEPA’s requirement that the environmental effects of “connected actions” be considered together in a comprehensive environmental review. “Connected actions” are those that:

- i. Automatically trigger other actions which may require environmental impact statements.
- ii. Cannot or will not proceed unless other actions are taken previously or simultaneously.
- iii. Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a)(1). NEPA does not permit “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” Thomas v. Peterson, 753 F.2d 754, 758 (9th Cir.1985) (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate); see also Save the Yaak Committee v. Block, 840 F.2d 714, 719-721 (9th Cir. 1988) (applying analysis from Thomas to conclude the same). MMS is attempting to do what courts interpreting NEPA have explicitly held cannot be done: fail to consider the effects of actions connected to the more limited action it chooses to review.

The Thomas court concluded “that the road construction and the contemplated timber sales are *inextricably intertwined*, and that they are ‘connected actions.’”

Thomas, 753 F.2d at 759 (emphasis added). The lease suspensions being sought in this case and the future exploration and development activities they will enable are similarly intertwined. MMS explains that “the suspensions would allow . . . time to conduct shallow hazards and biological surveys . . . and to conduct administrative activities leading to the submittal of revised [exploration plans].” See, e.g., Aera EA at ES-2. MMS also explains that the denial of the suspensions “would result in the expiration of the leases” and “the need for the proposed action would not be achieved.” See, e.g., Aera EA at 2-6. Because the proposed suspensions are connected in this way to subsequent exploration and development activities, those subsequent activities must be evaluated as part of NEPA compliance on the suspensions.

## II. The Activities Planned During the Proposed Suspensions May Cause Significant Environmental Impacts and Must Be Analyzed in an EIS.

In order to sustain its decision to prepare an EA rather than an EIS on the proposed suspensions, MMS must produce “a convincing statement of reasons” showing why the impacts of the proposed suspensions are insignificant. National Parks & Conservation Ass’n v. Babbitt, 241 F.2d 722, 730 (9th Cir. 2001). If “the agency’s action may have a significant impact upon the environment, an EIS must be prepared.” Id. (emphasis in original; internal quotation marks omitted). Put another way, if “there are substantial questions whether a project may have a significant effect on the environment,” the agency must prepare an EIS. Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004) (emphasis in original; internal quotation marks omitted). Because the actions planned during the suspension period may cause significant impacts, because MMS has failed to produce a convincing statement of reasons showing why these impacts must be insignificant, and because there are at the very least substantial questions about whether the suspensions may result in significant impacts, MMS must prepare an EIS on the suspensions.

Even without considering the exploration and development activities intended to take place after the proposed suspensions, MMS has failed to present convincing statements of reasons showing why the suspensions cannot have a significant impact on the environment. In particular, MMS has failed to show that the acoustic surveys planned for the Aera and Samedan leases cannot have a significant environmental impact. Since evidence within and apart from the EAs indicates these acoustic surveys may cause significant impacts, NEPA requires MMS to prepare an EIS on the proposed suspensions.

While MMS seeks to minimize the effects of the acoustic surveys, a bare recitation of the facts shows those effects to be substantial. MMS is proposing to operate acoustic surveys during each day of a 14-17 day period over an area of 10 square miles or more in size. During this lengthy and extensive operation, the lessees would fire an air gun repeatedly under water, approximately every 7-8 seconds, over and over again. “Air-guns release a volume of air under high pressure, creating a sound pressure wave that is capable of penetrating the seafloor to determine substrata structure.” National Research

Council, Ocean Noise and Marine Mammals 58-59 (2003).<sup>2</sup> The air gun MMS proposes to use for the acoustic surveys here is an extremely powerful noise source. MMS acknowledges the air gun has the capacity to generate geotechnical information at depths of up to 1,475 feet below the sea floor. Over the lengthy survey period, the air gun would be fired for up to 36 hours total, with the individual noises again coming every 7-8 seconds, over and over again.

MMS acknowledges that the air gun produces sound at 218 decibels and would yield received sound levels by marine mammals and fish of 160-190 decibels or more, depending on distance from the source. Aera EA at 2-5, 4-19. The EAs do an extremely poor job of placing these very loud noise levels in context. For example, while the EAs make no mention of it, the air gun's sound level appears to be as loud or louder than a jet airplane. See, e.g., National Research Council, For Greener Skies: Reducing Environmental Impacts of Aviation (2002). The potential for adverse consequences from such a loud noise source seems obvious, particularly since the noise would be repeated in abrupt shots spaced seconds apart over many hours.

There is limited data about the effect of underwater noise on sea life, a fact that by itself argues for preparing an EIS here, as we discuss below. What is known is that marine mammals and fish are sensitive to underwater noise, which can travel large distances underwater; that they rely on their noise perception for activities that include communicating between individuals; and that there is evidence showing damage to underwater life from noise sources on the sound order of the air gun. See, e.g., Ocean Noise and Marine Mammals, supra; S.L. Nieuwkirk et al., Low-frequency whale and seismic airgun sounds recorded in the mid-Atlantic Ocean, J. Acoust. Soc. Am. 115 (2004); D.A. Croll et al., Bioacoustics: Only male fin whales sing loud songs, Nature 417 (2002): p. 809 (observing that rise in noise levels from seismic surveys, oceanographic research, and other activities could impede recovery in fin and blue whale populations); P. Tyack, Acoustic communication under the sea, in Animal Acoustic Communication: Recent Technical Advances 163-220 (S.L. Hopp et al. eds., Springer-Verlag 1998); Hearing by Whales and Dolphins (W.L. Au, et al. eds., Springer-Verlag 2000); A. Popper, Effects of anthropogenic sounds on fishes, 28 Fisheries 24-31 (Oct. 2003). MMS's EAs contain an inadequate discussion of the adverse effect of human-caused noise on underwater life. Among other things, they fail to discuss with specificity the potential impacts on all sensitive species in California waters, including but not limited to the 34 species of marine mammals.

The EAs do admit that the acoustic surveys "have the potential for harassing or harming protected marine mammals and sea turtles" and that "[a]coustic harassment" by the planned surveys "could potentially occur" for certain whale species. Aera EA at 4-26, 3-6. Given the potential seriousness of these impacts and the vulnerable nature of many marine mammal and sea turtle species, this potential for harmful impacts is more than enough to justify preparation of an EIS. MMS, however, relies principally on two

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<sup>2</sup> We hereby incorporate by reference this and all other publications and documents cited in this comment letter.

arguments in an effort to avoid preparing an EIS. First, MMS argues that the sound levels marine mammals and sea turtles would experience from the acoustic surveys do not rise to the level of significant impacts. Second, MMS claims its mitigation measures will be sufficient to guarantee an absence of significant impacts from the acoustic surveys. Neither of the arguments are adequately supported in the EAs, and neither provides an adequate basis for refusing to prepare an EIS.

MMS apparently assumes that exposing marine mammals or sea turtles to received sound levels of 160 decibels or less cannot cause a significant impact on these animals. E.g., Aera EA at 4-15, 4-22. Nowhere does MMS support this critical assumption in its EAs. Next, MMS concludes that a received sound level of greater than 160 decibels would constitute a “taking” of a marine mammal under the Marine Mammal Protection Act but that such a taking would constitute only an “insignificant, adverse impact.” Id. at 4-15, 4-22. Nowhere does MMS explain why such harassment of a depleted marine mammal species necessarily constitutes an insignificant impact.<sup>3</sup> Outside the EAs, there is considerable evidence that tends either to undercut these assumptions or to suggest they rest on an inadequate basis. The National Academy of Sciences reports that “[s]hort- and long-term effects on marine mammals of ambient and identifiable components of ocean noise are poorly understood,” that “marine mammals have been shown to change their vocalization patterns in the presence of background and anthropogenic noise,” and that potential effects of underwater noise “include changes in hearing sensitivity and behavioral patterns, as well as acoustically induced stress and impacts on the marine ecosystem.” Ocean Noise and Marine Mammals, supra, at 3-6. The EAs discuss none of these issues adequately, and the presence of these potential effects means that significant impacts may result from granting the proposed suspensions.

The inadequate discussion of these issues in the EAs suffers from many flaws, including improper efforts by MMS to incorporate previous analyses by reference as well as citations to documents that do not appear in the EA’s list of references and hence are unidentifiable. See, e.g., Aera EA at 4-19. In addition, MMS’s analysis of hearing impacts on marine mammals appears to rely on an older (1991) study about the sound level that could cause immediate damage to marine mammals. The EAs omit an adequate discussion of issues such as the relevance of newer studies; the issue of non-immediate hearing injury; and the issue of harm to things other than an individual’s

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<sup>3</sup> The EAs present a set of “significance criteria” that MMS apparently relies on to determine whether an impact is significant or not. See, e.g., Aera EA at 4-15. These so-called “significance criteria” are extremely poorly supported: MMS has not come close to showing that impacts less severe or different than these criteria are necessarily insignificant. In addition to being unsupported substantively, the criteria are vague and seemingly arbitrary. For example, MMS presents as one criterion for marine mammals “any change in population that is likely to hinder the recovery of a species” but fails entirely to explain what “hindering” means in this context. Similarly vague is the criterion that discusses “[d]isplacement of a major part of the population ...” What constitutes a “major” part of a population in this context? Another criterion sets a seemingly arbitrary threshold of harm to at least 10 percent of the habitat in an area before that habitat harm is deemed significant. In addition, the criteria fail to address behavioral changes that could have an adverse effect on individual members of a species – for example, underwater noise diverting individual animals into less-ideal habitat than they would have occupied in the absence of the acoustic surveys.

hearing acuity. The EAs also fail to discuss adequately the issue of masking, which seems especially relevant since the air gun is louder than many marine mammal vocalizations. The inadequate analysis that is presented in the EAs relies on vague characterizations and hedge words that fail to present an adequately informative picture of the suspensions' likely impact. See, e.g., Aera EA at 4-23 (“It is believed that most protected species would avoid the ... air gun sound by making minor adjustments in their positions ... . The shallow hazard surveys are not likely to ... displace the population from a major part of either feeding or breeding areas or migratory routes for a biologically significant length of time.”) (emphasis added).

MMS admits that marine mammals exposed to received sound levels of 180 decibels or greater “may be harassed or harmed; it is possible that acoustic injury may lead to stranding and mortality and potentially significant impacts depending on the number of animals involved.” Aera EA at 4-22. MMS claims, though, that its mitigation measures for the acoustic surveys “make impacts on marine protected species unlikely and negligible.” Id. The agency’s analysis of the efficacy of these mitigation measures falls well short of NEPA’s requirements, and MMS’s EAs fail to demonstrate that the mitigation measures exclude the possibility of significant impacts from the acoustic surveys.

MMS relies heavily on a mitigation measure relating to the seasonal timing of the acoustic surveys. E.g., Aera EA at 4-22. According to MMS, restricting the surveys to the period between mid-October and mid-December will render the impacts of the surveys insignificant. There are many problems with MMS’s reliance on this mitigation measure, and MMS discusses none of these problems adequately in its EAs. First, the mitigation measure does not actually limit the acoustic surveys to this period but instead allows them to take place at another time so long as doing so would have “negligible impact to large whales,” Aera EA at 4-25, a criterion that is not developed or defined in any way and that also ignores potential increased impacts to animals other than large whales. Second, the mitigation measure is presented as having been selected because it will assertedly benefit four species of whales as well as all sea turtles, but MMS fails to explain why it is focusing on impacts to these four whale species to the exclusion of other marine mammals, including other marine mammals that are listed as threatened or endangered under the Endangered Species Act. Third, MMS claims this mitigation measure is valuable because the October-December period “lies outside, or on the cusp of,” the “predictable periods of occurrence” for four whale species in the area. The problems with this assertion go well beyond MMS’s use of the vague phrase “on the cusp of,” the meaning of which is nowhere explained in the EAs. According to the EAs, gray whales (one of the four species specified by MMS) actually are at their peak abundance in the area in December. Aera EA at 4-12. Aera’s suspension requests indicate that gray whale migration occurs between November and May. E.g., Purisima Point Suspension Request 8 (April 20, 2004) (attached to Aera EA as App. 1). Humpback whales, another of the four species assertedly benefited by the seasonal “restriction,” are regularly present in the area in October, November, and December. Aera EA at 4-12. Fourth, there is no support in the EAs for MMS’s claim that sea turtles are not located in the area between

October and December. Indeed, the EAs admit that little is known about the distribution of sea turtles in the Southern California Bight. Aera EA at 4-14. MMS has failed to discuss the effects of this mitigation measure adequately and to substantiate the agency's claims of environmental benefit from it.

Many of the rest of the mitigation measures on which MMS relies are poorly analyzed in the EAs. For example, MMS claims the lessees will use observers to detect any marine mammals that enter within a half mile of the air gun and to shut down the air gun if an animal enters that area. Nowhere in the EAs does MMS discuss the feasibility of observers accurately and effectively identifying all marine protected species that could enter within a half mile of the air gun, particularly species such as sea turtles, which are relatively small and capable of remaining submerged (and hence undetected by observers) for long periods of time. Other mitigation measures suffer from other serious problems, none of which are adequately discussed in the EAs. For example, the mitigation measure about "ramping up" the air gun only requires the lessees to do so "as possible," Aera EA at 4-25, a key point that escapes adequate discussion in the EAs.

The EAs' discussion of impacts on sea turtles is notably poor, particularly in light of evidence showing adverse reaction by sea turtles to noise from air guns at the levels at issue here. See Aera EA at 4-21 to -22. Similarly poor is the documents' analysis of impacts on the southern sea otter, a threatened species. MMS's no-effect assertions are based on the agency's belief that otters tend to locate close to shore and on a single 1983 study concluding that sea otters were not disturbed by an air gun. Aera EA at 3-5 to -6. This inadequate analysis ignores the ability of sound to travel underwater; potential adverse impacts to sea otter food sources; and all relevant post-1983 data.

Just as serious as the potential impacts on marine mammals from the acoustic surveys are the potential impacts on fish, but the EAs' analysis of these impacts is extremely poor and falls far short of NEPA's requirements. The National Marine Fisheries Service ("NMFS") has designated eight species of Pacific groundfish as overfished, and MMS admits that all eight of these species "could be present in the survey areas," Aera EA at 4-29. The EAs contain no recognition of the current overfished condition of these species and no analysis of the impacts on these specific species of the acoustic surveys planned for the Aera leases. To make matters worse, it appears that the acoustic surveys would be located in or near rockfish conservation areas established by the Pacific Fishery Management Council and NMFS for these species, yet the EAs omit any discussion of these potential impacts. In order to comply with NEPA, MMS must analyze with specificity the potential impacts of the acoustic surveys on all eight overfished Pacific groundfish species.

The EAs' general discussion of impacts on fish from the acoustic surveys is conclusory and inadequate and fails to take adequate account of the latest science. MMS admits that "[a]coustic energy has the potential for direct damage (lethal, potentially lethal, or sub-lethal effects) to any fish or shellfish life stage," Area EA at 4-30, yet the EAs present only a thin discussion of these potential impacts on fish, a discussion which

consumes less than two pages and focuses much more on eggs and larvae than later life stages. Among other things, the EAs attempt to dismiss a recent study by McCauley et al. by arguing that fish disturbed by underwater noise would likely seek to move away from the noise source. See Aera EA at 4-31 to -32. That argument fails to recognize that fish within range of the air gun could well suffer damage before they could move away from the noise source. The EAs pretend that a fish would need to be within 20 feet of an air gun in order to suffer damage, but that is not what the best and most recent science says. As the National Academy of Sciences has recently noted, McCauley's studies "show that exposure to air-guns with a maximum received level of 180 [decibels relative to 1 micropascal] over 20-100Hz causes major damage to sensory cells of the ear in at least one species" and suggest that "air-guns damage sensory hair cells in fishes." Ocean Noise and Marine Mammals, supra, at 107. Thus, in contrast to MMS's claim that fish would have to be within 20 feet of the air gun to suffer harm, McCauley's studies show that fish located 261 feet or more from the air gun in MMS's planned acoustic surveys could suffer damage. The National Academy also notes that McCauley's studies "could also have implications for marine mammals exposed to air-guns, particularly since the hair cells in fishes and marine mammals are so similar to one another;" that additional scientific data "suggest that sounds may change the behavior of fish;" and that behavioral changes in fish "could have an adverse impact on the higher members of a food chain [such as marine mammals] and therefore have long-term implications despite the fish not being killed or maimed." Id. at 107-08. MMS's EAs analyze none of these issues or data adequately and fail to present a convincing statement of reasons why the impacts of the acoustic surveys cannot be significant for fish and other animals that depend on fish for food. To the extent MMS's conclusions of insignificant impact on fish rest on the so-called "significance criteria" the agency presents in the EAs, these significance criteria are insufficiently supported, conclusory, and arbitrary in significant respects. For example, these criteria claim that fish displacement is significant only if 10 percent or more of the population is displaced, Aera EA at 4-30, but the EA fails entirely to explain the basis for this 10-percent threshold.

NEPA's implementing regulations establish a set of significance factors that help determine whether substantial questions exist about an agency action causing a significant impact, thus necessitating preparation of an EIS. 40 C.F.R. § 1508.27(b). See also Anderson v. Evans, 371 F.3d at 488 (discussing "significance factors"). Several of these significance factors are implicated by the proposed suspension and thus require preparation of an EIS. For example, one such factor asks whether there are "[u]nique characteristics of the geographic area, such as proximity to ... ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The areas subject to the proposed acoustic survey are located in the habitat of sensitive marine mammals and overfished species, are in or near conservation areas established for overfished Pacific groundfish species, and are near other ecologically critical areas such as the Channel Islands National Marine Sanctuary and the Monterey Bay National Marine Sanctuary. Another significance factor assesses "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 C.F.R. § 1508.28(b)(4). "Agencies must prepare [EISs] whenever a federal action is 'controversial,' that is, when substantial questions are raised

as to whether a project may cause a significant degradation of some human environmental factor or there is a substantial dispute about the size, nature, or effect of the major federal action.” National Parks & Conservation Ass’n, 241 F.3d at 736 (internal citation, ellipsis, brackets, and quotation marks omitted). While MMS maintains that the proposed suspensions cannot affect the environment significantly, the draft EAs, this letter, and the evidence cited therein raise substantial questions about environmental degradation from the proposed acoustic surveys and make out a substantial dispute about the effect of the surveys. A third significance factor is satisfied where “the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(5). If one thing is clear here, it is that “remarkably few details are known about the characteristics of ocean noise, whether it be of human or natural origin, and much less is understood of the impact of noise on the short- and long-term well-being of marine mammals and the ecosystems on which they depend.” Ocean Noise and Marine Mammals, *supra*, at 1. The same is true for effects of ocean noise on fish. *See, e.g., id.* at 10 (“effects of anthropogenic noise on fish and other nonmammalian species .. are largely unknown”). Another significance factor considers “[t]he degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat ...” 40 C.F.R. § 1508.27(b)(9). MMS admits that numerous threatened and endangered species may be affected by the proposed acoustic surveys.<sup>4</sup>

Other significance factors may be affected by the proposed suspensions, but any one is sufficient to require preparation of an EIS. Because there are at least substantial questions about whether the proposed suspensions may have a significant impact on the environment, MMS must prepare a comprehensive EIS on the proposed suspensions. The draft EAs contain an inadequate environmental analysis and cannot meet MMS’s obligations under NEPA.

### III. MMS Fails to Consider a Reasonable Range of Alternatives.

NEPA requires MMS to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). The Council on Environmental Quality regulations describes this section as the “heart” of the environmental review process, explaining that agencies must “rigorously explore and objectively evaluate all reasonable alternatives” and explain why alternatives were eliminated. 40 C.F.R. § 1502.14. The same requirement applies no matter whether the agency is preparing an EIS or an EA. 40 C.F.R. § 1508(9)(b). MMS failed to consider a reasonable range of alternatives to the proposed action of granting the suspensions.

MMS’ statement of need for the proposed action is improperly narrow and vague. “The stated goal of a project necessarily dictates the range of reasonable alternatives and an agency cannot define its objectives in unreasonably narrow terms.” City of Carmel-By-The-Sea v. United States Dep’t. of Transp., 123 F.3d 1142, 1155 (9th

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<sup>4</sup> The EAs fail to address specifically the critical habitat of listed species that may be affected by the proposed suspensions.

Cir. 1997). MMS unreasonably attempts to define the need here as a period of time to allow for the updating of exploration plans (“EP”) and development and production plans (“DPPs”). This thinly veiled attempt to narrow the scope of the project and, in turn, the required NEPA analysis is belied by MMS’ own admission that the goal beyond the suspension period is “to drill exploratory (delineation) wells . . . and to plan for the development and production” of the leases. Aera EA at 1-2. MMS must acknowledge that the suspensions are not merely an opportunity for administrative revisions to EPs and DPPs but are indispensable linchpins in the development of the leases. After all, absent the suspensions, the leases would expire and so too would any near-term opportunity for oil and gas development in the area. Accordingly, MMS must broaden the stated need and conduct an appropriate review of alternatives and impacts commensurate with the true nature and scope of the proposal. The actual need for MMS to act here is to decide whether or not to extend these old leases and, if so, under what terms.

MMS must look at every reasonable alternative within “the range dictated by the nature and scope of the proposal.” See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995) (quoting Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992)). Accordingly, MMS is obligated to consider other reasonable alternatives that fit squarely within the scope of deciding whether to extend the leases and, if so, under what terms. These include:

- Granting the suspensions but disallowing the acoustic and biological surveys and any other impacting activities;
- Granting the suspensions only for those leases and/or units in which exploratory drilling is being immediately planned.
- Denying the suspensions while adopting measures to encourage energy-use efficiency and the development of renewable energy sources.

#### IV. MMS Fails to Present Adequate Environmental Analysis of the Alternatives Under Consideration.

NEPA requires that agencies discuss “the environmental impacts of the proposed action and alternatives.” 40 C.F.R. § 1508.9(b). Environmental impacts are defined to include “both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b). MMS’s cursory and conclusory description of Alternative 2 fails to discuss adequately the environmental impacts of denying the requested suspensions. MMS summarily concludes that “no environmental impacts would result.” Aera EA at 5-1. NEPA requires that MMS explore and discuss the environmental benefits of not granting the suspensions and allowing the leases to expire. These benefits include but are by no means limited to: increased health and productivity of fisheries in the region; expanded opportunities for endangered and threatened marine mammals, sea turtles, and birds; enhanced recreational activities; and decreased risk of oil spills and other hazardous events.

V. MMS Fails to Analyze Adequately the Cumulative Impacts of the Proposed Suspension Activities.

NEPA requires MMS comprehensively to analyze the cumulative effects of all suspension-related activities “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. The cumulative impacts analysis must contain “quantified and detailed information,” Neighbors of Cuddy Mountain, 137 F.3d 1372 at 1379-80, must provide a “useful analysis of the cumulative impacts,” Muckleshoot Indian Tribe v. United States Forest Service, 177 F.3d 800, 810 (9th Cir. 1999), and must not “defer consideration of cumulative impacts to a future date when meaningful consideration can be given now,” Kern, 284 F.3d at 1075.

MMS improperly chose to segment its cumulative impacts analysis amongst separate EAs and, within each EA, amongst the separate sections considering impacts to various natural resources. Such “perfunctory” analysis is wholly inadequate. See Kern, 284 F.3d at 1075 (finding BLM’s analysis of the spread of root fungus from timber project inadequate for failure to consider the cumulative impact of future timber sales and other activities outside of the project area). By so doing, MMS avoids any comprehensive consideration of the cumulative effects of the suspension activities together with all other “reasonably foreseeable” activities, as required by NEPA.

A. MMS’ Inadequately Analyzes Cumulative Impacts to Marine Mammals and Sea Turtles.

MMS’ cumulative impacts analyses are cursory and inadequate. “To ‘consider’ cumulative effects, some quantified or detailed information is required.” Neighbors of Cuddy Mountain, 137 F.3d at 1379-80 (holding that Forest Service timber sale EIS analysis failed to adequately consider how the sale would cumulatively impact and reduce old growth habitat). The information provided by MMS in its cumulative impacts analysis is neither quantified nor detailed.

For example, the brief section concerning suspension-related impacts to protected species of marine mammals and sea turtles merely lists the various sources of “anthropogenic harm” to such species. E.g., Aera EA at 4-27. Instead of analyzing how the impacts resulting from suspension-related activities might exacerbate or compound harm being caused from other sources, as NEPA requires, MMS simply concludes that “there is no evidence that these activities have resulted in significant impacts on marine mammals and sea turtle populations.” Id. MMS then concludes that because the individual impacts of the proposed shallow water surveys are themselves negligible, the cumulative impacts attributable to the combined Aera and Samedan surveys “are not believed to be more than negligible.” E.g., Aera EA at 4-27. NEPA requires more than the rote addition of purportedly negligible activities. Indeed, the whole purpose of the consideration of cumulative impacts is to avoid “dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but

which collectively have a substantial impact.” Native Ecosystems Council, 304 F.3d at 894 (requiring Forest Service EIS to consider both a federal road and the federal timber sales that the road would facilitate) (quoting Thomas, 753 F.2d at 758). Indeed, as MMS acknowledged in the FEISs for the sale of some of these very leases, “cumulative impacts on marine and coastal resources may exceed a simple arithmetic addition of one impact with another due to synergistic effects which remain unknown or unsuspected at the present level of knowledge.” BLM, Final EIS for OCS Lease Sale 53 (Sept. 1980), at 4-128. MMS has failed to follow that admonition here.

MMS admits that “overall vessel traffic” off southern California “is increasing,” resulting in “increasing levels of noise and disturbance” underwater. Aera EA at 4-27. In a remarkable non-sequitur, MMS claims no significant impacts from these activities because “marine mammal populations in California waters have generally been growing in recent decades.” Id. The fact that populations have “generally” been growing does not exclude the possibility of significant cumulative impacts, either because some populations may be doing less well than others or because marine mammals populations, many of which are in poor condition, might do markedly better in the absence of these cumulatively adverse impacts.

B. MMS’ Inadequately Analyzes Cumulative Impacts to Fish Resources, Managed Species, and Essential Fish Habitat.

Unlike its assessment of cumulative impacts to marine mammals – where MMS fails to acknowledge any source of significant impacts to marine mammals (suspension-related or otherwise) – MMS does acknowledge that the cumulative effects of pollution, overfishing, and other human sources “has had a major influence on fish resources, managed species, and EFH.” E.g., Aera EA 4-32 to -33. MMS also acknowledges that “that acoustic energy/sound from an air gun can temporarily or irreversibly damage hearing in fish which could lead to sub-lethal behavioral changes not conducive to survival.” Id. at 4-31. Nonetheless, MMS describes these effects as mere “incremental contribution[s]” relative to the myriad other sources of adverse effects to fish, managed species, and EFH. Id. Without any further discussion, MMS concludes that “the additional effect of the impact-producing agents related to [the suspension-related activities] are not expected to add significantly to cumulative impacts on fish resources, managed species, and EFH.” Id. at 4-33. MMS cannot merely disregard the impacts of the suspension activities as insignificant just because they represent a relatively small portion of the overall threat to fish resources. See 40 C.F.R. § 1508.7 (“Cumulative impacts may result from “individually minor but collectively significant actions taking place over a period of time.”).

Another deficiency with MMS’ cumulative impacts analysis related to fish impacts is its failure even to mention, much less adequately consider, the combined effects of both the Aera and Samedan shallow water surveys. Neither the Aera EA nor the Samedan EA considers the cumulative effects on fish of all of the shallow water surveys together. See Aera EA at 4-32 to -33; Samedan EA 4-32 to -33. MMS must

consider “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 C.F.R. § 1508.27(b)(7). In Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1214-1215 (9th Cir.1998), the Forest Service was found to have violated this requirement by failing to analyze five distinct timber sales in a single NEPA analysis. The five timber sales were located in the same watershed, were announced simultaneously, and were part of a single timber salvage project. Id. The suspensions and their concomitant environmental impacts must similarly be considered in a comprehensive fashion. Failure to do so would render NEPA meaningless.

C. MMS’ Inadequately Analyzes Cumulative Impacts to Commercial Fishing.

MMS inexplicably and arbitrarily limits its consideration of cumulative impacts to commercial fishing only to those non-suspension activities and natural events that “overlap temporally and spatially with the proposed surveys.” Aera EA at 4-43. Indeed, this self-imposed limitation contradicts NEPA’s requirement that cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7 (emphasis added). Amazingly, MMS quotes this definition in the sentence immediately preceding its unsupported proclamation that only concurrent temporal and spatial impacts be considered. E.g., Aera EA at 4-43. MMS’ transparent desire to conduct an inadequate analysis of cumulative impacts to commercial fishing does not authorize such a blatant disregard of NEPA’s regulations.

MMS’s analysis of cumulative impacts to commercial fishing also fails to consider the combined impact of the suspension activities that are planned for both the Aera and Samedan units. Neither EA makes any reference to the shallow water surveys that are being planned in immediate sequence with each other. Aera EA at 4-43; Samedan EA at 4-43. This omission violates NEPA for the same reasons given in the preceding section.

D. MMS’ Inadequately Analyzes Cumulative Impacts to Recreational Fishing and Diving.

The analysis of cumulative impacts to recreational fishing and diving contained within the Samedan EA is also improperly limited to consideration of only those impacts that overlap in time and space with the proposed suspension activities. See the preceding section for a fuller explanation of why this approach violates NEPA.

E. MMS’ Inadequately Analyzes Cumulative Impacts to Military Operations.

Unlike all of the other cumulative impact discussions contained within the EAs, the section dedicated to impacts to military operations contained within the Aera EA

completely fails to discuss the impacts of the military operations on natural resources and the environment. See Aera EA at 4-43 to -48. Such consideration is necessary for a complete cumulative impacts analysis. Instead, the section is entirely devoted to consideration of the “insignificance” of the proposed suspension activities on military operations. MMS correctly considers this impact to military operations but fails to remember that the fundamental purpose of the task at hand is to conduct an “environmental assessment,” as opposed to a “military assessment.”

VI. The Draft EAs Omit Discussion of Other Important Issues.

The Aera EA fails to discuss the implications of the re-unitization requests filed by Aera earlier this year.

The EAs as a group fail to discuss whether many of the units and/or leases can qualify for a suspension in light of the lack of physical activities proposed for those leases or units during the proposed suspension periods.

VII. Conclusion.

The draft EAs on the proposed suspensions fall well short of NEPA’s requirements. MMS must prepare a comprehensive EIS before making a decision on whether to proceed with the proposed suspensions.

Sincerely,



Drew Caputo  
Attorney



David Newman  
Attorney